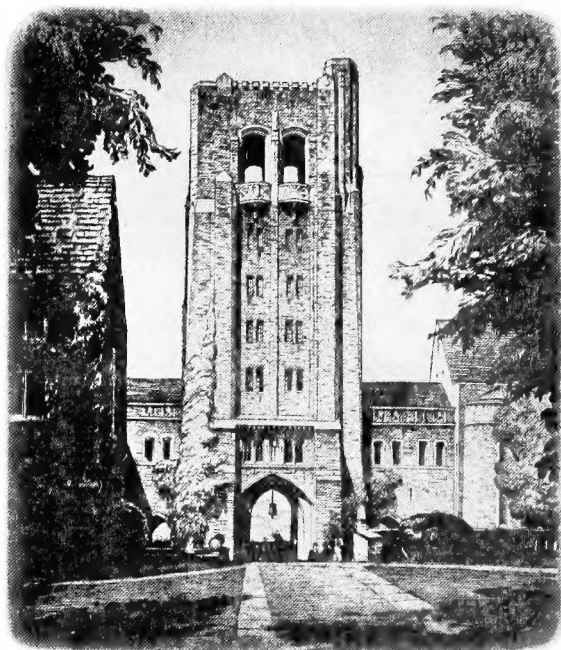


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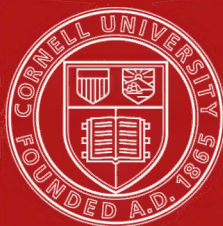
A treatise on the Interstate Commerce Ac



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A TREATISE
ON THE
Interstate Commerce Act
AND
Digest of Decisions Construing
the Same

BY
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AUTHOR OF "THE USE OF THE TERM 'RES GESTAE' IN THE LAW OF EVIDENCE IN PENNSYLVANIA," LECTURER ON THE INTERSTATE COMMERCE ACT IN THE LAW DEPARTMENT OF THE UNIVERSITY OF PENNSYLVANIA.

VOLUME II

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DIGEST OF DECISIONS CONSTRUING AND ENFORCING THE INTERSTATE COMMERCE ACT.

- 1.—**Re Southern Pac. R. Co.** 1 I. C. C. Rep. 6; 1 Int. Com. Rep. 16. (Apr. 6, 1887.)

Informal request for order for relief under Sec. 4 of the Act.

The president of the Southern Pacific Railroad Company wrote to the chairman of the Commission asking whether competition with ocean lines for business in Asiatic ports justified lower rates to such ports than to the Pacific coast.

The chairman replied that the Commission would not make an order for relief under Sec. 4, except on verified petition and after investigation of the facts.

- 2.—**Re Petitions of Railway Conductors, and of Traders' & Travelers' Union.** 1 I. C. C. Rep. 8; 1 Int. Com. Rep. 18; (Apr. 16, 1887.)

The two petitioners applied in writing to the Commission asking whether certain employes could properly be given free transportation and whether commercial travelers could properly be allowed certain free baggage.

Held, (Walker, C.), that the Commission would not express opinions on abstract questions, or on questions presented by *ex parte* statements of facts, involving the construction of the Act, without any controversy pending before it.

- 3.—**Re Indian Supplies.** 1 I. C. C. Rep. 15; 1 Int. Com. Rep. 22. (Apr. 18, 1887.)

The Secretary of the Interior wrote to the Commission asking whether, when the Government contracted for the delivery of supplies for Indians, the transportation of such supplies from the points of delivery to the points where they were to be used was "for the United States" within the meaning of Sec. 22, and required to be made at the regular published rates.

Held, (Cooley Ch.), (a) that although in general the Commission would not express an opinion on abstract questions, yet, in deference to a department of the Government, it would make an exception to this rule;

(b) that the supplies were transported "for the United States" within the meaning of Section 22.

4.—Re Iowa Barb Wire Co. 1 I. C. C. Rep. 17; 1 Int. Com. Rep. 21, 605. (Apr. 18, 1887.)

Petition for an order requiring defendants to allow complainant a manufacturing-in-transit rate.

It appeared that formerly defendants had permitted complainant to procure its raw material at a distance, manufacture its goods therefrom, and then ship the goods to market at the through rate from the original point of origin, to destination. This privilege would seem to have been discontinued when the Act went into effect, and complainant asked that it be sanctioned by the Commission.

Held, (Cooley, Ch.) (a) that the Commission would not give an opinion on an abstract question where no controversy was presented;

(b) that the Commission had no power to grant special privileges to given shippers.

5.—Re St. Louis Millers' Ass'n. 1 I. C. C. Rep. 20; 1 Int. Com. Rep. 22, (Apr. 19, 1887.)

Informal petition with reference to the legality of the milling-in-transit system at Minneapolis.

Held, (Cooley, Ch.), (a) that the Commission had not power to grant special privileges to a locality or to sanction this system;

(b) (semble) that milling-in-transit rates were not in accordance with the terms of the Act.

6.—Re United States Fisheries Commission. 1 I. C. C. Rep. 21; 1 Int. Com. Rep. 606, (Apr. 1887.)

The Fisheries Commissioner at Washington wrote to the President of the Interstate Commerce Commission asking whether the distribution of fish and eggs by his department was within the exception of Sec. 22.

Held, (Schoonmaker, C.) that the department in question was one of the agencies of the Government, and transportation for it was "for the United States" and within the exception of Sec. 22.

7.—Re Export Trade of Boston. 1 I. C. C. Rep. 24; 1 Int. Com. Rep. 18, 25, (Apr. 1887.)

Petition by roads leading to Boston to be permitted to charge the New York rate to Boston on export grain and provision shipments, although rates for local consumption were greater.

This petition was by the railroads and concerned the export trade only. A local grain merchant of Boston was heard, however, who contended that the New York rate should be applied to local grain and provisions. The export rate was produced by a rebate, which sometimes exceeded the ocean rates.

Held, (Cooley, Ch.) (a) that the export rate might properly be as low as that to New York;

(b) that the question as to the reasonableness of the local Boston rate as compared to that to New York was not decided;

(c) that no order was necessary to sanction a practice which would be legal without it;

(d) that the repayment of the excess on the export rate was not a rebate.

No order was issued and the petitions were allowed to be withdrawn.

8.—Southern Express Co v. Memphis, etc., Railroad Co. 8 Fed. 799. (July, 1881), C. C. E. D. Ark.

Application for injunction to restrain defendant from excluding complainant from carrying express packages on defendant's road by charging complainant a higher rate than that charged other favored express companies.

Held, (McCreary, C. J.), that defendant was bound to carry for the express company for a reasonable compensation and might not charge complainant more than the rate charged on similar matter to itself or to other express companies.

Order accordingly.

9.—Hays & Co. v. Pennsylvania Co. 12 Fed. 309, C. C. N. D. Ohio. (June, 1882.)

Motion for new trial after verdict for damages for discrimination in rates on coal.

The plaintiffs were engaged in mining at Salineville, Ohio, a point near the defendant's road, and shipped coal for sale in Cleveland. They were wholly dependent on defendant for transportation. The defendant's regular rate on coal between these points was \$1.60 per ton, with a rebate of from 30 to 70 cents per ton, to all shippers of 5000 tons or more per annum, the amount of rebate being graded by the annual tonnage of each shipper. Other shippers shipped more coal than plaintiffs, and, therefore, received lower rates. The defendants contended that if the discrimination was made in good faith to stimulate production and increase tonnage, it was reasonable and just and not illegal, but the trial judge instructed the jury that the discrimination in question was contrary to law and that plaintiffs were entitled to recover the excess in rates given them by defendant over those accorded their most favored competitors.

Held, (Baxter C. J., (a) that since defendant was a common carrier, the whole public was entitled to equal and impartial participation in the facilities afforded, and defendant had no right to make any unreasonable or unjust discriminations;

(b) that although harmless discrimination might be indulged in, when the discrimination enured to the undue advantage of one, and injustice of another, the law would protect the latter;

(c) that discrimination based exclusively on the amount of freight shipped during the year was unreasonable, as in favor of capital;

(d) that this case was distinguishable from *Nicholson v. G. W. R. Co.*, 5 C. B. N. S. 366, on the ground that in that case the shipper

avored had guaranteed shipments at regular intervals in trainloads, making the cost of service to the defendant less;

(e) (semble) that carrying one passenger free was not an unreasonable discrimination against one required to pay fare, nor was carrying supplies to communities scourged by disease or other calamity, nor carrying fertilizer or machinery to be employed along the line to stimulate the trade, nor carrying long distance freight at a less ton mile rate than short, or freight of less value at a less rate than more valuable freight, or emigrants at a less rate than first-class passengers, nor were party and carload rates illegal.

Motion denied.

10.—Samuels et al. v. Louisville & N. R. Co. 31 Fed. 57, C. C. N. D. Ala. (Apr., 1887.)

Demurrer to action at common law by steamship owners for damages for discrimination in favor of competing steamers, in charges for forwarding freight to destination.

The statement of claim alleged that the service for each was the same.

Held, (Bruce, J.), that it was no answer that the higher rate charged was not unreasonable, per se, since in a case like that at bar there could be no reasonable charge which was not substantially an equal one.

Demurrer overruled.

11.—Re Disabled Soldiers and Sailors. 1 I. C. C. Rep. 28; (May, 1887.)

The Commissioner of the Pension Bureau presented a petition asking that the railroads be permitted to carry disabled soldiers and sailors at reduced rates.

Held, (Schoonmaker, C.), that in the absence of a controversy, the Commission would not undertake to decide this question.

12.—Missouri & Ill. Tie & Lumber Co. v. Cape G. & S. W. R. Co. 1 I. C. C. Rep. 30; 1 Int. Com. Rep. 292, 607. (May and June, 1887.)

Complaint of discrimination in supplying cars for ties.

Complainant wished to ship ties from Missouri points via defendant's road to Cape Girardeau, Mo., but defendant refused to give him cars, although allowing them to his rivals. To show the shipment to be interstate commerce he relied on the fact that he intended to send the ties across the river by boat, but by a line over which defendant had no control, and with which it had no continuous line or common arrangement.

Held, (By the Commission) (a) that the shipment was intrastate and the Commission had no power in the premises;

(b) that the shipper's intention to have it go on did not make it interstate commerce although defendant knew of this intention.

Complaint dismissed.

13.—*Re Louisville & Nashville R. R.'s Petition.* 1 I. C. C. Rep. 31; 1 Int. Com. Rep. 16, 278. (Apr. and June, 1887.)

Petition for relief under Sec. 4.

The Louisville & Nashville R. Co. and other southern roads presented petitions on April 5th, 1887, the day on which the Act went into effect, praying for relief under Sec. 4 on various grounds which were answered at length in the opinion of Judge Cooley, giving the views of the Commission on Sec. 4 and on various related points under the first three sections. The following is a brief summary:

Held, (Cooley, Ch.), (a) that it was not necessary for a road in every case to apply to the Commission for relief under Sec. 4 in order to justify such road in making an exception under that section, but that Section 4 was applicable only where the circumstances and conditions at the long and short haul points were substantially similar;

(b) that Sec. 2 was also applicable only in cases of substantial similarity of circumstances and conditions;

(c) that Secs. 1 and 2 might be applicable irrespective of the rule of Sec. 4;

(d) that substantial dissimilarity might be brought about by water competition;

(e) by competition of railroads not subject to the Act;

(f) in rare and exceptional cases by the competition of roads subject to the Act;

(g) and by the fact that the short haul traffic was more expensive to the carrier, where the difference in expense was extraordinary and capable of definite proof;

(h) that the mere fact that the shorter distance traffic was local and that the longer was through traffic, was not a sufficient justification of higher rates for the former;

(i) nor was the fact that the road desired to build up business or trade centres at the longer distance point or to maintain those already built up;

(j) nor the fact that it was to the advantage of the road to encourage certain industries at the longer distance point;

(k) that the fact that the long haul traffic would bear only certain rates did not justify the carriage of it at rates yielding a return below the actual cost of transportation (not including interest on fixed charges), since such loss would necessarily be borne by the shorter distance traffic.

Relief had been granted for 90 days. Ordered that it be continued until the time fixed for expiration when the roads should put in force tariffs adjusted in accordance with the foregoing opinion.

14.—*Chicago & Alton R. Co. v. Pennsylvania Co. et al.* 1 I. C. C. Rep. 86; 1 Int. Com. Rep. 291, 293, 357. (July, 1887.)

Complaint of refusal by defendant to allow complainant reasonable and equal facilities for the interchange of traffic allowed other roads.

Complainant's road ran from Chicago to the West and its Chicago terminus was near the western terminus of the three defendant roads. Prior to March, 1887, there had been through routes between complainant and defendants. Prior to that time also it had been the practice of most roads to pay commissions to the agents of connecting roads on the sale of through tickets via their lines. The three defendants (P. R. R., Pa. Co., & N. Y. C. & H. R.) in an endeavor to stop this practice issued a circular stating that they would not in future sell or honor through tickets over any roads except such as agreed not to pay any commissions to defendants' agents, although almost all defendants' connecting roads entered into this agreement. Complainant refused so to agree and the through route with it was thereupon discontinued by defendants. The commissions previously paid to agents by connecting roads often had exceeded the regular salaries paid them by the road employing them, and agents had been permitted and encouraged to divide their commissions with the passenger where necessary to get the business.

Held, (Schoonmaker, C.), (a) that through routes and rates were a matter of agreement between connecting roads and the Act did not make it the duty of roads to establish such through lines against the will of either;

(b) that even if the Commission had power to require the establishment of through routes, in the present case defendants' refusal was reasonable and proper and complainant had no just cause for complaint.

Complaint dismissed.

Morrison, C., dissented as to both the above propositions.

15.—*Holbrook et al. v. St. Paul, M. & M. R. Co.* 1 I. C. C. Rep. 102; 1 Int. Com. Rep. 315, 323. (July, 1887.)

Complaint of threatened or probable car-discrimination.

The petition in this case, filed April 18, 1887, averred that defendant had denied cars to complainants during the previous fall and winter and that complainants, fearing similar action in the coming fall, applied to the Commission for a proper and adequate remedy. The answer justified the defendant's past action and alleged its purpose to comply with the law. The only evidence furnished was on *ex parte* affidavits.

Held, (by the Commission) (a) that the Commission had no power to anticipate violations of the law or to issue mandatory injunctions;

(b) that no order could be made against a road on a complaint not supported by evidence;

(c) that where a road avowed a purpose to comply with the law, it must be assumed that it would do so until there was evidence that the purpose was not lived up to.

Complaint dismissed.

16.—**Fulton et al. v. Chicago, St. P., M. & O. R. Co.** 1 I. C. C. Rep. 104; 1 Int. Com. Rep. 375. (July, 1887.)

Complaint of freight rates recently put in force between Chicago and St. Paul alleged to be unreasonable in comparison to those previously in force.

In one case defendant reduced the rates after complaint and no complaint was made of the rates as reduced. In the other case defendant's answer alleged that the lower rates previously in force were unreasonably low as the result of a rate war. No evidence was offered.

Held, (Bragg, C.), (a) that defendant having remedied the cause of complaint in the first case, that complaint should be dismissed without prejudice;

(b) that notwithstanding the recent advances in rates the burden was on the petitioner to prove the allegations of his petition by evidence with reasonable certainty and that he had not done so here.

Complaint dismissed without prejudice.

17.—**Providence Coal Co. v. Providence & W. R. Co.** 1 I. C. C. Rep. 107; 1 Int. Com. Rep. 316, 363. (July, 1887.)

Complaint of preference and discrimination against complainant in coal rates in favor of larger shippers, of unreasonable coal rates from Providence, R. I., to points north as compared with those from East Providence, and of defendant's refusal to continue to haul complainant's coal to its freight station free of charge.

Defendant's road ran from Providence to Worcester, Mass. It had in force a rule allowing a 10% discount to dealers receiving 30,000 tons a year at any one station (there being probably only one such dealer on defendant's line.) In the offer of this discount in the tariff there was a statement that it was for the purpose of securing quick unloading, but this was not made a condition of securing the discount. Complainant had established its business at a large expense at Providence when defendant's road was first established from Providence via Valley Falls to Worcester. Defendant's accommodations at Providence were limited and could not reasonably be enlarged so that defendant subsequently constructed a branch from Valley Falls, seven miles long, to East Providence, where ample accommodations were secured. It was defendant's desire to throw most of the freight over the latter branch. The branch from Valley Falls to Providence was but six miles long. The coal rates from Providence and East Providence to Valley Falls and to Lonsdale (the next station north of Valley Falls) were the same, but to points north of Lonsdale, the rate from Providence was 10 cents per ton higher. Prior to the building of the new branch defendant had voluntarily hauled complainant's coal without charge by cars drawn by horses from complainant's wharf to its Providence freight station, but recently it had discontinued this privilege.

Held, (Cooley, Ch.), (a) that 30,000 ton rule was an unjust discrimination in favor of large dealers, forbidden by the Act;

(b) that complainant having established its business at Providence at great expense and the rate to Valley Falls from Providence and East Providence being the same, it was unreasonable to make a greater charge from Providence to points north of Lonsdale by reason of greater inconvenience of handling traffic there;

(c) that the haul free of charge to defendant's Providence depot had not been a right of complainant but a mere privilege, which defendant was free to withdraw at will;

(d) (semble) that a difference in rates based on dispatch in unloading might be justified;

(e) (semble) that an offer in a tariff to give reduced rates on a certain ground there stated could not subsequently, when that ground failed, be supported by referring it to some other and different ground.

Order accordingly.

18.—Traders' & Travellers' Union v. Philadelphia & R. R. Co. et al.

1 I. C. C. Rep. 122; 1 Int. Com. Rep. 371. (July, 1887.)

Complaint of defendant's refusal to perform and continue certain agreements with reference to transporting baggage.

Complainant was organized in 1884. It was a sort of insurer of baggage, and in January, 1886, made an agreement with defendants by which they agreed to take 150 pounds extra free baggage from complainant's patrons in consideration of their release from liability for such baggage. Defendants in April, 1887, refused to continue or to perform this agreement or to carry the extra free baggage.

Held, (Bragg, C.), (a) that the Commission had no power to enforce contracts;

(b) that it also had no power to compel railroads to enter into arrangements such as this.

Complaint dismissed.

19.—Burton Stock Car Co. v. Chicago, B. & Q. R. Co. et al.

1 I. C. C. Rep. 132; 1 Int. Com. Rep. 329. (June and July, 1887.)

Complaint of defendant's refusal to pay mileage for the use of its cars, and of unreasonable rates on stock transported therein.

Defendants had special cars for hauling stock so that the stock could be fed, etc., *en route*. They charged shippers $2\frac{1}{2}$ c. per mile. Defendants refused to pay them the usual $\frac{3}{4}$ c. per mile allowed to other roads per car. By defendants' tariffs, stock in private stock cars was taken at 120% of the regular rate in 30 ft. cars with 3% added for each additional foot of car. This was justified by defendants on the ground that there were no return loads possible in these cars, while in ordinary cars lumber, etc., could be brought back.

Held, (Walker C.), (a) that as complainant was not a common

carrier it was not an unjust discrimination against it to refuse to allow it the usual mileage allowed to such carriers, and that the Commission had no power to order such mileage to be paid by defendants;

(b) that the question as to the reasonableness of the rate on stock in complainant's cars was not decided, the evidence not being sufficiently clear to warrant an order.

20.—Ottinger v. Southern Pac. R. Co. 1 I. C. C. Rep. 144; 1 Int. Com. Rep. 607. (July 20, 1887.)

Complaint by ticket broker of defendant's refusal to permit transfer of a certain passenger ticket while allowing transfer of another ticket.

The ticket which defendant's General Passenger Agent had authorized to be used by another person (if accompanied by the original buyer) was not similar to the one complained of nor had it ever in fact been used. Complaint was also made that 175 tickets sold by complainant had been confiscated, but this had been prior to the Act.

Suggested in a letter to complainant's attorney (Walker, C.), (a) that no complaint of preference or discrimination could be based on events occurring prior to the Act;

(b) that although the Commission had a certain discretion in adjudging complaints made by parties having no interest therein, in the present case the complaint should be presented by the transferee of the ticket;

(c) that the two tickets were not similar, so that a discrimination did not necessarily result from the allowance of the transfer of one and not the other.

21.—Larrison v. Chicago & G. T. R. Co. 1 I. C. C. Rep. 147; 1 Int. Com. Rep. 369. (July 25, 1887.)

Complaint of discrimination in sale of mileage tickets to commercial travellers at less rates than to others.

The rate charged to commercial travellers for 1000 mile tickets was \$20, while that to the general public was \$25. In all mileage tickets there was a provision limiting the road's liability. Commercial travellers sold goods which increased the road's freight traffic. Defendant contended that under Sec. 22, mileage tickets were not subject to the provisions of the Act.

Held, (Morrison, C.), (a) that although under Sec. 22 mileage tickets might be issued at rates less than those charged for single tickets, the provisions of the Act as to reasonableness, discrimination and preference were applicable to them and that they might not be sold to one class of persons at less rates than to another;

(b) that the provisions limiting liability did not affect the above conclusion since it applied to all mileage tickets and not merely to those sold to commercial travellers;

(c) that a less rate to the favored class was not justified by the fact that their vocation increased defendant's freight traffic.

22.—Thatcher v. Delaware & H. Canal Co. et al. 1 I. C. C. Rep. 152, 1 Int. Com. Rep. 24, 317, 356. (July 25, 1887.)

Complaint of discrimination in higher local grain rate from Schenectady, N. Y., to Boston, than the proportion received for the haul between such points as defendant's share of the through rate from Chicago to Boston.

Prior to the Act complainant had been allowed a grain rate equal to the proportion of the through rate, but after the Act defendants refused to continue such rate on the ground that it was lower than rates from intermediate points between Schenectady and Boston. These rates were not complained of, nor was it asked that they be reduced.

Held, (Schoonmaker, C.), (a) that to grant the relief prayed for it would be necessary to require the defendants to make an exception to Sec. 4, which the Commission had no power to do;

(b) that the Commission would not correct one alleged violation of the law by compelling another and the rates from intermediate points were not shown or alleged to be unreasonable.

Complaint dismissed.

Whether or not it was lawful for a road to receive a proportion of a through rate less than a local rate over the same line, was not decided in this case.

23.—Associated Wholesale Grocers of St. Louis v. Missouri Pac. R. Co. 1 I. C. C. Rep. 156; 1 Int. Com. Rep. 321, 393. (July, 1887.)

Complaint of unreasonable rate for mileage tickets to commercial travellers and of refusal to sell them to such travellers at rates lower than those open to the general public.

The rate on 1000 mile tickets, prior to the Act, had been \$20 to commercial travellers and \$25 to others, but since the Act it had been made \$25 to all. Commutation and excursion tickets were sold at rates which on some occasions were as low as \$15.00 per 1000 miles.

Held, (Walker, C.), (a) that the evidence was not sufficient to show that \$25.00 was an unreasonable charge for a 1000 mile ticket;

(b) that mileage tickets when issued must be sold to all impartially, and on the same terms. *Larrison v. C. & G. T.* (21) affirmed.

Complaint dismissed.

24.—Boston & Albany R. Co. v. Boston & Low. R. Co. et al. 1 Int. Com. Rep. 291, 400, 500. *Vermont State Grange v. Boston & Low. R. Co. et al.* 1 I. C. C. Rep. 158; 1 Int. Com. Rep. 408, 500. (Sept., 1887.)

Complaint of violation of Sec. 4, by higher charge from Boston to

Ogdensburg, N. Y., than to lake ports more distant on the same line.

Several carriers participated in the long haul traffic which did not have any part in the shorter haul, and defendants contended that the traffic in the two cases did not, therefore, proceed over the same line. The Boston and Albany R. Co. was not interested in these rates as a shipper, and its purpose in bringing the complaint was to compel the defendants to raise the long haul rates or to secure a construction of the Act. The Vermont State Grange was an unincorporated association of individuals. The defendant sought to justify the high rate to Ogdensburg on the ground of greater competition by the Trunk line roads to the Lake ports.

Held, (Cooley, Ch.), (a) that although where a party brought a public grievance to the attention of the Commission, he need not prove a pecuniary interest, yet the Commission did not give opinions on abstract questions or undertake to construe the law in advance where no controversy was pending;

(b) that the Commission could not compel the defendants to raise the low through rates, nor could their competitors prevent them from keeping such rates in force;

(c) that the Vermont State Grange was a proper party complainant;

(d) that where defendants joined in making a tariff constituting the lesser charge on the longer haul while one or more of their number made the greater charge on the shorter haul, the case was within Section 4, and those making the greater charge must justify it;

(e) that the competition of the Trunk lines did not render the conditions dissimilar so as to justify, in this case, the greater charge for the less distance.

Order requiring defendants to desist therefrom.

25.—*Leonard v. Union Pac. R. Co.* 1 I. C. C. Rep. 185; 1 Int. Com. Rep. 472, 627. (Oct. 1887.)

Complaint of discrimination in excessive charge on cattle when transported in Burton stock cars.

The charge on cattle in private cars, not a part of the carrier's equipment, was 38% in excess of the regular rate. The answer of the defendants denied that the rate charged was unreasonable, or that there was any discrimination, alleging that the cost of the service in transporting the private cars was greatly in excess of that when company cars were used. No evidence was presented by either party.

Held, (By the Commission) that in the absence of evidence, there being no intimation that further proceedings were desired, the complaint must be dismissed, but without prejudice.

See also *Jackson v. St. Louis, Ark. & Tex. R. Co.* 1 I. C. C. Rep. 184.

26.—**Keith et al. v. Kentucky Cent. R. Co. et al.** 1 I. C. C. Rep. 189; 1 Int. Com. Rep. 316, 601. (Oct. 1887.)

Complaint of unreasonable charges and of discrimination in delivery of stock at complainant's yards.

Complainants owned stock yards on defendant's live stock switch. The Covington Stock Yards Company also had yards on the same switch. Defendants had made an agreement with the latter company for 15 years, from 1881, by which they agreed to deliver all stock at its yards. The validity of this agreement was at issue before the U. S. Supreme Court. Prior to the establishment of complainant's yards in May, 1886, no charge had been made for passing stock through the Covington Yards, but after that date an extra charge was made on all stock unloaded at the Covington Yards, and taken to complainant's (no stock being delivered at complainant's yards direct). Defendants offered to receive or ship stock for complainants at their general freight depot free from terminal charges, but this depot was so inconvenient to all parties that since April, 1886, it had been used only in exceptional cases. Defendant also refused to receive stock for transportation for complainants, except through the Covington Stock Yards.

Held, (Morrison, C.), (a) that as common carriers of live stock, it was defendants' legal duty to provide reasonable and proper facilities for receiving on board and discharging from their cars live stock, free of charges other than the usual transportation charges;

(b) that this duty was not discharged by receiving on or discharging from their cars live stock at a depot, access to which must have been purchased;

(c) that complainant's patrons were entitled to ship and receive stock through complainant's yards on equal terms with the patrons of the Covington Stock Yards Co., and that under the restrictions in force this was not possible;

(d) that until defendants provided a suitable free live stock depot at Covington, they should be required to receive from and deliver such stock to complainants at their own yards;

(e) that the pendency of a suit in the U. S. Supreme Court covering to some extent the subject-matter of this case did not preclude the Commission from entering an order which the decision of that Court would not necessarily cover, but leave should be given either party to apply for a modification of the order to conform to the judgment of that Court when rendered.

Order accordingly.

27.—**Allen et al. v. Louisville, N. A. & C. R. Co.** 1 I. C. C. Rep. 199; 1 Int. Com. Rep. 586, 621. (Oct. 1887.)

Complaint of violation of Sec. 4 in higher rates to New York from Frankfort, Ind., than from Indianapolis.

Defendant's line ran from New Albany to Chicago with a branch from Monon to Michigan City. The main line and branch were inter-

sected by roads running east, the connection with the Michigan Cent. being at Michigan City, and that with the N. Y. C. & St. L., at South Wanatah, Ind. By defendant's line with the Michigan Cent. the total distance from Indianapolis to New York via Michigan City was 1055 miles, and by its line with the N. Y. C. & St. L. the distance to New York from Frankfort via South Wanatah was 1008 miles, but the short line distance from Indianapolis to New York was 825 miles and from Frankfort 846 miles. The distance over defendant's own line from Indianapolis to Michigan City was 154 miles, and from Frankfort to South Wanatah was 84 miles. The grain rate from Indianapolis was 23c., and from Frankfort 25c., and the defendant accepted a proportion of this rate, on a mileage basis, with its connecting lines, who fixed the rates in question. On this basis defendant's share of the rate from Indianapolis was less than its share of that from Frankfort. The connecting roads were not parties to this proceeding.

Held, (Cooley, Ch.), (a) that on defendant's own line there was no violation of Sec. 4;

(b) that without passing on the question as to whether or not the rate relation in question was properly determined by the short line distances, these rates could not be altered without all the roads who participated in the rate complained of being parties;

(c) that this case was distinguishable from *Vermont State Grange v. Boston and L. R. Co.*, (24), where the higher rate for the shorter distance complained of as violating Section 4, was over defendant's line only.

Complaint not sustained.

28.—Smith v. Northern Pac. R. Co. 1 I. C. C. Rep. 208; 1 Int. Com. Rep. 611. (Oct. 1887.)

Complaint of discrimination in favor of Settlers and Land Explorers by lower passenger rates to them than to the general public.

Complainant offered no proof that he had applied for a "Settlers" or "Land Explorers" ticket, which defendant sold at reduced rate through its land agent, and no such rates appeared in defendant's tariff, but in defendant's answer it admitted that such tickets were sold to *bona fide* settlers or to persons wishing to examine the lands which had been granted to defendant by the Government, with a view to purchase and settle on the same. Defendant sought to justify this on the ground that this course enabled it to sell its land, and also stimulated its freight traffic. If lands were subsequently purchased the price of the ticket or part of it was allowed on the purchase price.

Held, (Walker, C.), (a) that although, since complainant had not proved that he had applied for such a ticket and been refused, no case of discrimination had been made out, nevertheless under Sec. 15 the Commission had the power to investigate and correct the violation of the law which appeared in this case;

(b) that the sale of tickets to settlers and land explorers at reduced rates was an unjust discrimination against the general public which defendant would be notified to cease forthwith;

(c) that such discrimination was not justified by the fact that the sale of defendant's lands was thereby stimulated;

(d) nor by the fact that its freight traffic was thereby increased;

(e) that the crediting of the price of tickets sold on the purchase price of lands subsequently bought was not a violation of the Act.

29.—Farmington Board of Trade Union et al. v. Chicago, M. & St. P. R. Co. 1 I. C. C. Rep. 215; 1 Int. Com. Rep. 608. (Nov. 1887.)

Complaint of unreasonable grain rates to Chicago from points on defendant's southern branch running via Farmington, Minn., from Minneapolis to Chicago, and of preference of points on its northern or main branch via Red Wing, Wis.

The northern branch was subject to strong competition both by rail and by the lake route. The rate from Minneapolis and many intermediate points was 7½c. per 100 pounds, while by the southern branch it was 15c., and from the petitioning towns 15c. and 13c. Rates on other traffic besides wheat from Minneapolis to Chicago were the same over both routes. The southern route was the longer,

Held, (Schoonmaker, C.), (a) that while a difference in rates on the two divisions was proper, the difference should not be unreasonable;

(b) that where a road controlled two parallel branches, rates over one branch were not justified merely by the fact that if the parallel branch did not exist they would, considered by themselves, be reasonable, since they must be relatively reasonable;

(c) that rates over the southern division should not exceed 10c. per 100 pounds, or be more than one-third higher than those over the main or northern route.

Order accordingly.

30.—Raymond v. Chicago, M. & St. P. R. Co. 1 I. C. C. Rep. 230; 1 Int. Com. Rep. 474, 627. (Nov. 21, 1887.)

Complaint of unreasonable grain and flour rates from Mazeppa, Minn., to Chicago, compared to those from Minneapolis, Red Wing, and Lake City, Wis.

Red Wing and Lake City were points on defendant's main line between St. Paul and Chicago, while Mazeppa and McCracken were on a narrow gauge branch leaving the main line at Wabasha, the distance from Wabasha to McCracken being 18 miles, and to Mazeppa 52 miles, and Red Wing and Lake City being 29 and 12 miles west of Wabasha. Prior to the passage of the Act, the rates from Red Wing, Lake City, Minneapolis and McCracken were all 15c. per 100 pounds, and from Mazeppa 17c. In May, 1887, the Red Wing, Lake City and Minneapolis rates were reduced to 7½c., that from Mc-

Cracken to 8c., and that from Mazeppa to 12½c. The 7½c. rate was a competitive one.

Held, (Morrison, C.), (a) that in view of Mazeppa's situation on the narrow gauge branch line a somewhat higher rate was proper, but a difference of 5c. was unreasonable;

(b) that even though the Mazeppa rate was reasonable *per se*, and that from the main line points very low (barely exceeding the cost of service) the competition of railroads at the point having the low rate did not justify an unreasonable difference in the rates to the two localities.

Ordered that the Mazeppa rate should not exceed that from Red Wing, etc., by more than one-third or 2½c.

31.—*Harwell et al. v. Columbus & W. R. Co. et al.* 1 I. C. C. Rep. 236; 1 Int. Com. Rep. 494, 631. (Dec. 1887.)

Complaint of preference and discrimination in rates against Opelika, Ga., in favor of Montgomery, Ala., and Columbus, Ala., in rates in general and especially in refusal of through rates on cotton to New Orleans.

In the territory around Opelika the roads constructed rates on the trade-centre or basing point system, making certain important towns the basing points and fixing rates to intermediate towns by the lowest combination of the rate to and from the nearest basing point. Opelika, however, which was situated 109 miles from Atlanta, 66 miles from Montgomery and 29 miles from Columbus, took rates somewhat lower than the lowest combination rates on these towns, its rates being the result of a compromise with the roads and being the rate to the nearest basing point with a certain arbitrary (less than the full local rate from that point) added. They were still considerably higher, however, than the rates to basing points more distant on the same line. The purpose of this complaint was not to have Sec. 4 enforced, but to have Opelika put on the same footing with Columbus and Montgomery. This would have necessitated rates to Opelika much lower than those to less distant smaller towns, which towns were not parties. Competition by water was alleged to exist at Columbus and Montgomery, but it appeared that, especially at Columbus, this competition had been destroyed by the reduction of railroad rates. The through cotton rate from Opelika to New Orleans had been abolished by defendants some time before the filing of this complaint, although connecting roads were willing to allow such a rate, and although it was still allowed on other commodities, and although there were through cotton rates from Montgomery and Columbus. Defendants alleged a rather incoherent justification, based on indefinite threatened rebates by connecting lines.

Held, (Walker, C.), (a) that although there appeared to be an unjust discrimination against Opelika in favor of Columbus and Montgomery, since this could not be corrected without producing a similar preference in favor of Opelika against smaller towns not

represented, the case would be retained with the hope that defendants would voluntarily adjust their tariffs, or with leave to complainants to proceed further, with all interested localities made parties;

(b) that the water competition alleged was not actual but merely possible competition likely to arise if railroad rates were raised, and that such competition did not justify either an exception to Sec. 4 or a discrimination or preference under Secs. 2 or 3;

(c) that there being no justification of defendant's refusal to give Opelika through cotton rates to New Orleans, and such refusal being an undue preference of Montgomery, Columbus, etc., defendants should be ordered to desist from such violation of the law within ten days after notice.

Order accordingly.

32.—Evans v. Oregon Ry. & Nav. Co. 1 I. C. C. Rep. 325; 1 Int. Com. Rep. 314, 326, 641. (Dec. 1887.)

Demand for a return of excess over a reasonable rate on wheat from Walla Walla to Portland, Ore.

The rate between the above points on wheat in 1887 was 30c. per 100 pounds for a distance of 246 miles. Evidence was presented by the defendant showing that its line ran through a sparsely settled country; that it was subject to great expense for removal of snow and repairs; that the wheat crop moved during only a small portion of the year, leaving the cars idle the rest of the time; that most of such cars were returned empty to Walla Walla; that labor and fuel were expensive and that under the present tariff rates, which had been greatly reduced of late years, the railroad was unable to pay the current rate of interest on its capital stock. The complainant offered evidence that wheat rates on other lines were lower and that the defendant's proportion of gross earnings to operating expenses was somewhat higher than the average, but it was not shown that such proportion was exceptionally high. It appeared that the Oregon Commission had recommended a rate of 20c. between these points.

Held, (Bragg, C.), (a) that it would be very dangerous to railroad properties to require railroads to make freight rates on mere theories or conjectures;

(b) that in view of the conditions of transportation a somewhat higher rate than the average wheat rate was here proper;

(c) that a 30c. rate was unreasonable;

(d) that a reasonable rate was 23½c.;

(e) that although the recommendation of a State Commission was always entitled to weight and respectful consideration, yet this Commission would be governed by the evidence before it in a transaction involving interstate commerce.

Order that defendant cease to charge more than 23½c. per 100 pounds on wheat between the above points, during the present grain season.

33.—**Councill v. Western & Atl. R. Co.** 1 I. C. C. Rep. 339; 1 Int. Com. Rep. 292, 355, 638. (Dec., 1887.)

Complaint by colored man of discrimination in accommodations in favor of white passengers, and demand for reparation and counsel fees.

Complainant was a colored minister and had bought a first-class ticket from Chattanooga, Tenn., to Atlanta, Ga. He took a seat in the car set apart for white persons, was told to move into the colored car, refused and was then forcibly removed and somewhat roughly handled by passengers, with the knowledge and probably the approval of the conductor and brakeman. The colored car was greatly inferior in accommodations to that provided for whites. Complainant claimed \$20,000 for his injuries and \$1500 for his counsel.

Held, (Morrison, C.), (a) that defendant being constitutionally entitled to a trial by jury the Commission had no power to award damages;

(b) that the counsel fee provided for by Sec. 8 could be fixed only by a court and not by the Commission;

(c) that it was not an undue discrimination to require white and colored persons to occupy different cars;

(d) that all persons, whether white or colored, purchasing first-class tickets, were entitled to equally safe and comfortable accommodations and the denial of such to complainant was a violation of Sec. 3, which should cease.

Order accordingly.

34.—**Riddle Dean & Co. v. Pittsburg & L. E. R. Co.** 1 I. C. C. Rep. 374; 1 Int. Com. Rep. 601, 688, 773. (Jan. 14, 1888.)

Complaint of discrimination and preference in car-supply for coal against complainants in favor of competing mines.

Complainants had mines on defendant's road in Ohio and Pennsylvania. Defendant's line and connections ran from Youngstown, Ohio, to New Haven, Pa., to Ashtabula and Cleveland, Ohio, on Lake Erie, and to Buffalo, N. Y., the chief coal and coke shipments over defendant's road being from the Pittsburg region to the smelting furnaces at Ashtabula and Cleveland, which returned the cars promptly (within two or three days) loaded with ore. There was also a coal trade to Buffalo, but cars sent there were gone from defendant's line for at least a week and often two weeks. During the summer of 1887 there had been a coke strike, the raising of which resulted in high rates via the lakes and in a great congestion of the traffic which had been delayed by the strike, so that defendant did not have half enough cars for use on its own line. It then issued the order (here complained of) that no cars should be allowed to go off its line to Buffalo. Complainant wished to ship to Buffalo where prices were high. Complainant also alleged that defendant refused to furnish box cars for coal while furnishing them for coke, but this allegation was not sustained by the evidence, as was also the case with

certain other allegations. When there were not sufficient cars for all, defendant pro-rated those available among the various shippers in proportion to their shipments.

Held, (Bragg, C.), (a) that in time of car famine ratable delivery was the proper method of allotment of cars.

(b) that at such a time it was proper for defendant to refuse to allow its cars to go off its own line;

(c) that no discrimination or preference was disclosed by the evidence.

Complaint dismissed.

35.—*Reynolds v. Western N. Y. & P. R. Co. et al.* 1 I. C. C. Rep. 393; 1 Int. Com. Rep. 600, 685. (Jan., 1888.)

Complaint of unreasonable rate on and classification of railroad ties.

Until 1887, railroad ties were placed in 6th class with other rough lumber. They were then placed in class 5 in carloads and in class 4 in less-than-carloads, more than doubling the rate over that on lumber, which was given a special rate lower than 6th class. The real reason for raising the tie rate was to decrease the purchase price of the ties for the benefit of the railroad and to prevent the ties from going off its line. There was no greater cost in transporting ties than in case of other lumber.

Held, (Walker C.), (a) that a carrier was not justified in raising the rate on a particular article in order to keep down the price thereof for its own advantage;

(b) that ties should be placed in the same class with lumber.

Order accordingly.

36.—*Crews et al. v. Richmond & Danville R. Co.* 1 I. C. C. Rep. 401; 1 Int. Com. Rep. 490, 703. (Feb., 1888.)

Complaint of preference of Richmond and Lynchburg jobbers over those at Danville, Va.

Complainant represented Danville jobbers. The defendant railroad ran from Richmond and Lynchburg—stations on through lines from the west—south through Danville. The sum of the through rates from the west to Richmond and Lynchburg plus the local rate from those cities to stations near Danville was much less than the through rate to Danville plus the local rate from Danville to such stations, thus giving Lynchburg and Richmond jobbers a great advantage. The defendant alleged, that although it published through rates to Danville, such rates were in all cases made by adding the through rate to Richmond, over which it had no control, to its own rate from Richmond on. Until 1887 the defendant used the trade centre system of rate making, but since the passage of the Act the rates were rearranged to conform to Sec. 4. Richmond and Lynchburg were on the trunk lines, where very low rates were in force.

Held, (Cooley, Ch.), (a) that there was no undue discrimination,

Richmond and Lynchburg having better rates because better located;

(b) that it was impossible to determine the reasonableness of local rates by comparison with through rates;

(c) that discrimination must consist in the doing for or allowing to one party or place what is denied to another and could not be predicated by action which in itself was impartial.

Complaint dismissed.

37.—*Heard v. Georgia R. Co.* 1 I. C. C. Rep. 428; 1 Int. Com. Rep. 314, 493, 719. (Feb., 1888.)

Complaint of discrimination against complainant, a negro, in accommodations on passenger trains.

Complainant, a negro minister, had bought a first-class ticket from Cincinnati, Ohio, to Charleston, S. C., via Atlanta, Ga. To Atlanta he rode in a car with white persons, but when he boarded defendant's train at Atlanta the conductor refused to allow him to enter the rear car, which was reserved for white persons. The forward car, half of which was for negroes and half for smoking, was very inferior in accommodations, having no cushions, carpet, ice cooler, etc., being filled with smoke from the other half of the car and having other objectional features incident to it.

Held, (Schoonmaker, C.), that complainant had made out a case of undue discrimination against him. Statements of law in *Councill v. Western & Atlantic R. Co.* (33), affirmed.

Order accordingly.

38.—*Boston Chamber of Commerce v. Lake Shore & M. S., N. Y. C. & H. R. and B. & A. R. Co's.* 1 I. C. C. Rep. 436; 1 Int. Com. Rep. 354, 391, 462, 604, 754. (Feb., 1888.)

Complaint of unreasonable rates from the west to Boston on goods for domestic consumption as compared with export rates and rates to New York, and of preference of New York over Boston.

The Lake Shore & M. S. ran from Chicago to Buffalo, N. Y., the New York Central from Buffalo through Albany, N. Y., to New York, and the Boston & Albany from Albany to Boston. Export rates to Boston were the same as to New York, but on goods for domestic consumption, Boston rates were higher than export rates or than New York rates by from 10c. on first and second-class, to 5c. on other classes. The distance from Albany to Boston was somewhat greater than that from Albany to New York, and the road had steeper grades and less than half the business and competition that there was to New York. The L. S. & M. S. and the N. Y. C. received a less amount as their proportion of the through rates as far as Albany on shipments to New York than on those to Boston.

Held, (Schoonmaker, C.), (a) that in view of the different conditions of the two hauls the arbitraries were reasonable and it did not matter that they were not always mathematically consistent since

such matters could never be arranged with precise accuracy and simplicity was a great advantage;

(b) that the Commission considered only the total charge and its division between the connecting roads was immaterial.

Complaint dismissed.

Walker and Morrison, CC., concurred in the order, but intimated that they would prefer to abolish the arbitraries and have the Boston rate a fixed per cent. of that to New York.

39.—Pyle & Sons v. East Tenn., Va. & Ga. R. Co. 1 I. C. C. Rep. 465; 1 Int. Com. Rep. 600, 767. (Feb. 15, 1888.)

Complaint of unreasonable rate and classification of Pearline as compared with soap.

The Southern Ry. & S. S. Association, to which defendant belonged, classed soap as 6th class and Pearline and soap powders as 4th, making the rate on Pearline from New York to Atlanta, Ga., 73c. per 100 pounds while that on soap was 33c. (though nominally 49c.) This rate on soap was forced by the steamship lines. Certain railroads classed soap and Pearline in the same class, but these roads ran entirely in the interior where water competition, which affected soap more strongly than Pearline (the latter being more easily injured by water), was felt. The State Commissions of Georgia and Alabama had placed soap and Pearline in classes 4 and 6 respectively.

Held, (Bragg, C.), (a) that there were a number of important particulars in which soap differed from Pearline as regards the proper rate or classification of each, the most important being value and destructibility, and the circumstances justified a higher rate on Pearline, but the difference in rates should not exceed certain figures named;

(b) that although this Commission had great respect for the opinions of the State Commissions, it preferred to rest its decisions on the evidence before it.

Order accordingly.

40.—Farrar & Co. v. East Tenn., Va. & Ga. R. Co. et al. 1 I. C. C. Rep. 480; 1 Int. Com. Rep. 600, 764. (Feb., 1888.)

Complaint of unreasonable lumber rates from Dalton, Ga., to Knoxville, Johnson City and Bristol, Tenn., and to Roanoke and Lynchburg, Va.

Defendant's rate to Knoxville, 110 miles, was 7c. per 100 pounds; to Johnson City, 216 miles, 10½c.; to Bristol, 241 miles, 11c. To Roanoke, 391½ miles, the joint rate of the E. T. Va. & Ga., and the N. & W. was 22c., and to Lynchburg, 445 miles, 23c. Prior to 1887 these last two rates had been 18c. but they had since been raised to comply with Sec. 4 of the Act.

Held, (Bragg, C.), (a) that the rates to Knoxville, Johnson City and Bristol were not shown to be unreasonable;

(b) that the general rule was that the rate per ton mile should decrease as the distance increased;

(c) that the rates to Roanoke and Lynchburg were not in conformity with this rule in comparison with the rate to Bristol and for this reason they were unreasonable;

(d) that the rate to Roanoke should not exceed 17c., and that to Lynchburg should not exceed 18c.

Order accordingly.

41.—Heck & Petree v. East, Tenn., Va. & Ga. R. Co. et al. 1 I. C. C. Rep. 495; 1 Int. Com. Rep. 498, 775. (Feb. 1888.)

Complaint of undue preference in defendant's refusal to receive coal for transportation from complainant's mine while receiving it from his neighboring competitors, and demand for reparation.

Complainant's mine was one of several situated on the line of the defendant, the Coal Creek & New River R. R. Co. This was a short road, three miles in length, wholly in Tennessee. It had formerly been owned by Heck and the defendant, the Knoxville & Ohio road. Its stock was now owned by the E. T., Va. & Ga. and the K. & O. Owing to a disagreement with Heck, these two roads had refused to receive his coal for interstate shipment after April 15th, 1887, basing their right so to refuse on the ground that the C. C. & N. R., the initial road, was wholly in the state of Tennessee. Coal was meanwhile received freely from other shippers. The C. C. & N. R. road owned no cars or other rolling stock and had never operated its road, all transportation over its line having been conducted by the K. & O. in cars owned by the latter.

Held, (Morrison, C.), (a) that the C. C. & N. R. road was at least one of the "instrumentalities of shipment or carriage" in the hands of the other defendants and it could not be used by them as a means of discrimination between the mine owners situated upon it;

(b) that complainant's coal should be received and forwarded on equal terms with that of other shippers;

(c) that no damages could be awarded by the Commission since defendants were entitled by the Constitution to a trial by jury.

Order accordingly.

42.—Rice v. Louisville & N. R. Co. et al. 1 I. C. C. Rep. 503; 1 Int. Com. Rep. 354, 376, 443, 722. (Feb. 23, 1888.)

Complaint of discrimination and preference of shippers of oil in private tank-cars (Standard Oil Co.), over shippers in barrels, by higher rate per 100 pounds on barrel shipments.

Oil was shipped over defendant roads in two ways,—in tank cars, and in barrels loaded in ordinary box cars. Tank cars held from 20,000 to 40,000 pounds, according to the size of the car. Defendants owned no tank cars, these all being owned by shippers, the Standard Oil Co. owning almost all of them. Shippers had the exclusive use of their own tank cars, and were paid mileage on them,

the amount and extent not being definitely fixed, but depending on contract. To use tank cars it was necessary to have expensive stationary tanks at termini. The published rate sheets stated merely the rates per 100 pounds in tanks and in barrels, without stating that defendants owned no cars, and without stating the mileage paid by defendants for private tank cars, or whether such would be allowed on returning empties or whether mileage would be allowed in both directions. In many instances defendants charged for tank shipments by the car irrespective of whether the amount actually carried in a given car was 20,000 pounds or 40,000 pounds. For certain local hauls the same rates per 100 pounds were quoted on tanks and barrels, but these were almost all to points to which there were no tank shipments. To practically all points where the Standard Oil Co. had stationary tanks the rate on barrel oil per 100 pounds was from 20% to 200% higher than on that in tanks. In some cases the roads professed to charge a certain rate on tanks of 20,000 pounds with a given charge per 100 pounds for excess, but in practice often no charge was made for such excess. Complainant wrote numerous letters to various railroad agents asking for tank rates and trackage allowance in case he should build tank cars, but could never get any definite answers. Defendants alleged as a justification of the difference in rates of transportation by the two methods, (1) that the carriers were saved the expense of furnishing the rolling stock, (2) that less risk was attached to tank shipments, (3) that in case of tank shipments there was more back-loading.

Held, (Cooley, Ch.), (a) that in order to comply with the requirements of Sec. 6, the fact that the defendant owned no tank cars and the amount of mileage paid for the use of private tank cars should be stated in the tariffs filed;

(b) that what was a reasonable rate under Sec. 1 could not be determined simply by the reasonableness *per se* of the given rate for the service rendered without regard to the rate charged competitors shipping by a different method, but under this section rates were required to be relatively reasonable compared to rates charged competitors;

(c) that the fact that a road owned no cars was no justification of a discrimination in favor of shippers whose cars it hired, nor was it proved that the tank method involved less risk and more back-loading;

(d) that the same rate should be charged per 100 pounds on oil in tanks and in barrels, but a reasonable allowance might be made for the use of private cars;

(e) (semble) that a road having no cars of a certain kind and hiring them from shippers should pro-rate them among all shippers or at least see to it that no discrimination in rates was made in favor of the owners thereof.

Order accordingly.

General unfair treatment of complainant by agents appeared

throughout the correspondence quoted in the above opinion and was condemned by the Commission.

43.—*Riddle, Dean & Co. v. New York, L. E. & W. and P. & L. E. R. Co's.* 1 I. C. C. Rep. 594; 1 Int. Com. Rep. 787 (Feb. 24, 1888.)

Complaint of unreasonable rates on coal from Pennsylvania mines to Cincinnati; and of refusal to haul coal at tariff rates.

Complainant had mines in Western Pennsylvania on the P. C. & Y. road north of Pittsburgh, which connected with the P. & L. E. road at Chartiers Pa., the latter road running to Youngstown, Ohio, and there connecting with the N. Y., L. E. & W., which ran from Youngstown to Dayton, Ohio, from which point the C. C. C. & I. ran to Cincinnati. Although this last division of the haul to Cincinnati belonged to the C. C. C. & I., and its equipment was used thereon, by a joint agreement with the N. Y., L. E. & W., the latter road was given the right to operate this division and make rates, etc., over it as if it were its own line. The joint tariff of the two defendants from complainant's mines to Cincinnati was \$1.70 per ton, this being a special commodity rate, and the sixth class rate (in which coal was included) was \$2.70. In November, 1887, complainant asked the P. & L. E. agent whether coal could be shipped to Cincinnati, and was so assured. Ten cars went through, but the N. Y., L. E. & W. then stopped all further shipments to Cincinnati, on the ground that there was a block in the yards there. This was not, however, the real reason (complainant's consignees at Cincinnati having private switches which could accommodate 50 cars). The real reasons for the stoppage order were: First, that defendants had only enough cars for what they termed their "regular patrons," complainants being only "occasional shippers"; and second, that they could use the cars to better advantage between Pittsburgh and Cleveland on account of the return loads of ore, there often being no return loads from Cincinnati. Defendants also claimed that they were not responsible for rates over the division between Dayton and Cincinnati, owned by the C. C. C. & I. Complainant was informed that defendant might consider shipments at the \$2.70 rate, but would in no event give him gondolas which he especially desired. A statement was issued that the \$2.70 rate would go into effect in 10 days, but the notice really allowed but 9 days, and during this period no cars were allowed complainants at \$1.70, the then tariff rate.

Held, (Walker, C.), (a) that occasional shippers had the same rights as regular patrons;

(b) that a road was not free to use its equipment as suited its own advantage, but was bound to serve all shippers alike;

(c) that under the above agreement the N. Y., L. E. & W. was responsible for rates over the C. C. C. & I. tracks;

(d) that defendants were bound to ship at the \$1.70 rate until the full 10 days had elapsed;

(e) that no damages could be awarded as complainant was entitled to a trial by jury.

Order accordingly.

44.—Riddle, Dean & Co. v. Baltimore & Ohio R. Co. 1 I. C. C. Rep. 608; 1 Int. Com. Rep. 701, 778. (Feb., 1888.)

Complaint of discrimination in cars for coal.

From Aug. 19th, to Aug. 30th., 1887, there had been an embargo on coal to Cleveland, Ohio, from mines on the defendant's Pittsburg division, on which the Youghiogheny Slope mines, for which complainants were the selling agents, were situated. On Aug. 30th., this embargo was raised but complainants made no demand for cars to Cleveland until Sept. 4th. Another mine knew of the raising of the embargo and got plenty of cars. It was not clear whether or not complainants were notified of it, but at least they made no inquiry.

Held, (Bragg, C.), (a) that it was the duty of a shipper to make inquiry as to the raising of an embargo and not that of the carrier to notify him;

(b) that no discrimination or preference was here shown;

(c) (semble) that where a road voluntarily notified one shipper of the raising of an embargo, it should notify all.

Complaint dismissed.

45.—La Crosse Mfgs'. & Jobbers' Union v. Chicago, M. & St. P. R. Co. et al. 1 I. C. C. Rep. 629; 2 Int. Com. Rep. 9. (Mar., 1888.)

Complaint of preference of Chicago jobbers over those of La Crosse, Wis., by relation of rates from Chicago to La Crosse, and to nearby towns.

Rates to La Crosse were not alleged to be unreasonable *per se* but by reason of the grouping system in force, under which the same rates were charged to a number of towns in the vicinity of La Crosse, jobbers at the latter point could not compete with those at Chicago. Complainants practically asked that rates be placed on a mileage basis.

Held, (By the Commission) (a) that in order to comply with the Act rates need not be on a mileage basis;

(b) that as this point had been deliberately passed on in previous decisions no hearing was necessary in this case, and the petitioner would be notified accordingly.

46.—Martin v. Southern Pac. Co., et al. 2 I. C. C. Rep. 1; 1 Int. Com. Rep. 596; 2 Int. Com. Rep. 1. (1888.)

Complaint of defendant's refusal to give mixed carload rates on dried fruits and raisins, and of violation of Sec. 4 in rates from San Francisco to Denver, higher than to Kansas City.

In the different classifications covering the traffic between the Pacific and the Missouri River, there was great confusion as to which articles would be allowed in mixed carloads. In the western classification "dried fruits" might be mixed but not "raisins." In most cases Kansas City rates were lower than those to Denver, and in some cases Denver rates were higher than the sum of the rate to Kansas City, and the local rate back to Denver. The competition of the Canadian Pacific was alleged as a justification of the latter condition, but this competition appeared no longer to be of importance.

Held, (Walker, C.), (a) that the different classifications should be revised with a view to securing uniformity;

(b) that a direct tariff rate would never exceed a combination rate by another route;

(c) that no justification appeared for a higher rate to Denver than to Kansas City, but as the roads appeared to be endeavoring to adjust their tariffs to conform to the views of the Commission, no order would be entered for 60 days.

47.—Martin et al. v. Chicago, B. & Q. R. Co. et al. 2 I. C. C. Rep. 25; 2 Int. Com. Rep. 32. (June 19, 1888.)

Complaint of preference of Chicago jobbers over those at Omaha, in rates from the east.

Complainants, the Omaha Freight Bureau, complained of the system of rates in force from Chicago to points near Omaha, in that the through rates from Chicago to such points were less than the combination of the rates to Omaha plus the local from there to the surrounding points. It appeared that the rates from New York to Omaha were the same as those to Chicago plus the Chicago-Omaha rates, but this principle did not apply to combinations of local rates on other intermediate points between New York and Omaha. At the argument, perceiving that this case was ruled by *Crews v. Richmond & D.* (36), counsel for complainants shifted their ground and endeavored to establish from the evidence that the combination rates on Omaha were an unreasonable amount above the through rates. Objection was also made to complainants right to institute the proceedings.

Held, (Cooley, Ch.), (a) that complainants were proper parties to institute the proceedings.

(b) that under *Crews v. R. & D.* (36), complainants were not entitled to the relief prayed for in the original petition;

(c) that there was no evidence to support the new contention;

(d) (semble) that a complainant could not obtain relief on a ground put forward for the first time at the argument.

Complaint dismissed.

48.—Minnesota Business Men's Association v. Chicago, St. P., M. & O. R. Co. 2 I. C. C. Rep. 52; 1 Int. Com. Rep. 483, 591; 2 Int. Com. Rep. 41. (June 20, 1888.)

Complaint of unreasonable rates from Lake Superior ports, to points south and west of St. Paul, Minn.

Defendants operated a road from the Lake Superior ports through St. Paul to points south and west thereof. Rates to the latter point were higher per ton mile than those to St. Paul, although in no case did they transgress the long and short haul rule. Between the Lake and St. Paul defendant had to compete with a purely intra-state road which enforced very low rates. There was also some competition beyond St. Paul, but the traffic there was much lighter, the competition less and the cost of maintenance of road greater. It appeared that to require a decrease of the per ton mile rate with distance beyond St. Paul would destroy competition and necessitate innumerable fractional rates.

Held, (Bragg, C.), (a) that although as a general rule the ton mile rate should decrease as the distance increased, this was not an invariable rule, and the present case was an exception;

(b) that low rates forced on a road by circumstances beyond its control were not a proper basis of comparison with other rates as to which there was no such compulsion;

(c) that circumstances and conditions of a carrier's own creation, or which, by a reasonable exertion it could obviate, were no justification under Secs. 2 and 4, but that circumstances and conditions beyond its control, not of its own connivance, and which by a reasonable exertion it could not obviate, did justify exceptional rates, not in themselves unreasonable, although such rates produced a discrimination or preference or a less charge for a greater distance.

Complaint dismissed.

50.—Minnesota Business Men's Association v. Chicago & N. W. R. Co. 2 I. C. C. Rep. 73; 1 Int. Com. Rep. 483, 589; 2 Int. Com. Rep. 48. (June 20, 1888.)

Complaint of unreasonable rates from Chicago to St. Peter, Minn., compared to those to Pierre, Dak.

Rates from Chicago to points between St. Peter and Pierre were lower per ton mile than those to St. Peter, but beyond St. Peter the traffic was lighter, the competition less, snow-blockades more frequent and coal supply less available, etc. It appeared that it was possible by using combination rates via St. Peter, to secure rates to points beyond St. Peter lower than the regular published through rates to such points.

Held, (Bragg, C.), (a) that a comparison of rates made under dissimilar conditions such as here appeared was of no value;

(b) that the general rule that the ton mile rate should decrease as the distance increased was subject to exceptions and was here inapplicable;

- (c) that the rates to St. Peter were reasonable;
- (d) that no finding was made as to the reasonableness of the rates from St. Peter to Pierre;
- (e) that the existence of a combination of rates to points beyond St. Peter lower than the through rates to such points was anomalous and would be further investigated in a proceeding in which defendants would be required to explain it.

Complaint dismissed.

51.—*Scofield et al. v. Lake Shore & M. S. R. Co.* 2 I. C. C. Rep. 90; 1 Int. Com. Rep. 593; 2 Int. Com. Rep. 67. (July 19, 1888.)

Complaint of unreasonable rates on oil in less-than-carloads as compared with carload rates, of unreasonable carload rates in barrels compared to those on shipments in tank cars, of defendant's refusal to provide tank cars, and of preference and discrimination in favor of large shippers of oil against smaller ones.

Complainants were refiners at Cleveland, Ohio, defendant's line running from Buffalo, N. Y., through Cleveland, to Chicago, Ill. The ratios of the oil rates in less than carloads, in carload barrel shipments, and in tank cars were about 100:50:38. The Standard Oil Company owned both tank and stock cars, defendant paying $\frac{3}{4}$ c. per mile for the use of them, both going and returning empty. Three of the twelve complainants owned tank cars. In barrel shipments the weight of the barrel was charged for, but in tank shipments nothing was charged for the weight of the tank. In carload shipments the car went direct to destination, was loaded and unloaded by the shipper and consignee, did not stop at way-stations, went on a faster schedule, required but one way-bill, the freight all being collected at once. These facts were not true of shipments in less-than-carloads. The latter shipments did not average nearly so much freight per car, as other commodities would be tainted by the smell of oil and could not be carried in the same car with it.

Held, (Bragg, C.), (a) that although there appeared to be too great a tendency on the part of the railroads to favor large shippers at the expense of small ones, and although rates amounting to a prohibition of small shipments were unjustified, yet in view of the facts, the relation between carload and less-than-carload rates in this case was not unreasonable;

(b) that no greater rate per 100 pounds should be charged on carload shipments in barrels than in tanks, but that in the former, defendant might charge for the weight of the barrel;

(c) that the Commission had no power to compel defendant to provide tank cars;

(d) that defendant might properly use the cars of other carriers, or of shippers and pay reasonable compensation therefor.

Order accordingly.

52.—Hurlburt v. Lake Shore & M. S. R. Co. 2 I. C. C. Rep. 122; 2 Int. Com. Rep. 15, 31, 81, 448. (July 20, 1888.)

Complaint of unreasonable rate and classification on hub-blocks from Ashtabula, Ohio.

Before complainant located at Ashtabula he had inquired of defendant's agent as to the rates he would get, and was told that hub-blocks would go as 6th class freight. Defendants subsequently rated them as 5th class. Hub-blocks as shipped by complainant had been sawed out of the logs and the bark, etc., turned off, and they had been seasoned at each end with a special preparation, and a hole bored through the middle. In 6th class was lumber and in 5th, "wagon material, unfinished," and "hubs." The shipments made were all to points beyond defendant's line and the connecting carriers were not parties. Members of the committee which made the classification in question were called to testify to their understanding as to which class "hub-blocks" belonged in, but their evidence was rejected.

Held, (Cooley, Ch.), (a) that although in a proceeding to compel a reduction of through rates all roads participating in such rates were necessary parties, such was not the case in a proceeding to determine the proper classification of a commodity, in this case the initial road being the only essential party, although connecting roads were proper parties and would be heard if they so desired;

(b) that defendant's promise to complainant to allow him 6th class rates, and complainant's establishment at Ashtabula on the faith of it, gave him no right to special rates;

(c) that the intention or understanding of the framers of the tariff or classification was not the test of its meaning, since such a document must speak for itself;

(d) that hub-blocks should properly be classed with lumber in 6th class and not with finished hubs or with wagon material.

Order accordingly.

53.—Brady et al. v. Pennsylvania R. Co. et al. 2 I. C. C. Rep. 131; 1 Int. Com. Rep. 649, 810; also 3 Int. Com. Rep. 283. (July 23, 1888.)

Complaint of unreasonable rates on oil from Washington, Pa., to Baltimore, Md.

The Pennsylvania Railroad Co. operated a line from Pittsburgh to Baltimore. The Pittsburgh C. & St. L. R. Co. operated a line 32 miles long from Pittsburgh to Washington, Pa. A controlling interest in the latter road was owned by the P. R. R. Co., and the two roads were operated under an agreement, filed with the Commission, providing for a through line. For the through haul the Pennsylvania R. Co. received 35c. and the P. C. & St. L. R. Co. 15c. For a similar haul entirely over the Pennsylvania Railroad, of about the same length the Pennsylvania R. Co. charged only 40c. Complaint was filed by certain oil dealers of Baltimore. The Pennsyl-

vania R. Co. claimed that it was only responsible as far as Pittsburgh and that there were properly two hauls; also that there was great risk in hauling oil through the manufacturing district in Pittsburgh. It appeared that there had been no accident in Pittsburgh to date from such a cause, but there had been one arising from a like state of affairs at Brunswick, N. J.

Held, (Morrison, C.), (a) that the right to the control and earnings of the subsidiary road, carried with it the responsibility for the justice of the charges over the whole route;

(b) that the alleged danger at Pittsburgh was negligible;

(c) that although the apportionment or division of a through rate among the roads, parties to it, did not determine what the charge to the public should be, it was not without significance in determining what were reasonable rates for the whole distance;

(d) that the rate was unreasonable and should be reduced to 40c.

Order accordingly.

Rehearing denied, 5 I. C. C. Rep. 635; 4 Int. Com. Rep. 283.

54.—New Jersey Fruit Exchange v. Cent. R. R. of New Jersey, and Lehigh V. R. R. Co. 2 I. C. C. Rep. 142; 2 Int. Com. Rep. 18, 84. (July 23, 1888.)

Complaint of unreasonable rates on fruit from New Jersey points destined to New York.

It appeared that the traffic, although ultimately destined to New York, was delivered by the defendants to the consignees at Jersey City, N. J., and the rates were made, not to New York City, but to Jersey City. As to certain other traffic originating in New Jersey, and destined to Pennsylvania, the evidence was too indefinite to warrant any conclusions.

Held, (Schoonmaker, C.), (a) that the traffic to Jersey City was intra-state and the Commission had no jurisdiction over it;

(b) that as to the traffic to Pennsylvania, no conclusion could be reached.

Complaint dismissed.

55.—Lincoln Board of Trade v. Burlington & M. R. Co. et al. 2 I. C. C. Rep. 147; 1 Int. Com. Rep. 647; 2 Int. Com. Rep. 95, (Aug. 11, 1888.)

Complaint of preference of Omaha over Lincoln, Neb., in rates from Chicago.

The junction on defendant's roads from which one branch of the line from Chicago led to Lincoln, and another to Omaha, was 21 miles from Omaha and 48 miles from Lincoln, the respective distances being 508 and 535 miles, with Lincoln thus 27 miles or 6% more distant. By short line Lincoln was 9% more distant. The Lincoln rates averaged 9% higher than those to Omaha, but under the grouping system in effect to all Missouri River points, the Omaha rate

began 90 miles east of Omaha. Lincoln had given grants of land to the defendants while Omaha had not.

Held, (Walker, C.), (a) that the latter fact was immaterial;

(b) that although as a general rule a rate per ton mile should decrease as the distance increased, this was not an invariable rule, and in view of the greater railroad competition and potential competition by water at Omaha, of the fact that Lincoln was situated in a more sparsely settled country, and of the low rates to Omaha, a rate relation between the two points based on short line distance was proper.

Complaint dismissed.

56.—Lincoln Board of Trade v. Missouri Pac. R. Co. 2 I. C. C. Rep. 155; 1 Int. Com. Rep. 648; 2 Int. Com. Rep. 98. (Aug. 11, 1888.)

Complaint of unreasonable rates from St. Louis, Mo., to Lincoln, Neb., and preference of Omaha, Neb.

By defendant's road the distance from St. Louis to Lincoln was 490 miles and to Omaha 494, but by the Wabash (which did not run to Lincoln) the distance to Omaha was only 413 miles. The rates to Lincoln averaged about 9% higher than those to Omaha, and by agreement among the various roads, were a certain differential under the rates from Chicago. From Kansas City and points south, defendant's rates to Lincoln and Omaha were the same, and they were also the same from St. Louis to Kansas City and Omaha, although the distance to Omaha was almost twice as great as that to Kansas City. The Wabash rate really determined defendant's rate to Omaha.

Held, (Walker, C.), (a) that although the system of rates in force was by no means perfect it would not be altered unless the Commission saw a better system to replace it, which was not the case here;

(b) that short line distance was properly considered in determining the propriety of rates by a longer competing line;

(c) that in view of the competition by the Wabash to Omaha, of the inferior geographical situation of Lincoln and of the great confusion which an alteration of the rate situation to these points would necessitate, no action would be taken by the Commission.

Complaint dismissed.

57-A.—Kentucky & Ind. Bridge Co. v. Louisville & Nashville R. Co. 2 I. C. C. Rep. 162; 1 Int. Com. Rep. 703, 715; 2 Int. Com. Rep. 102. (Aug. 2, 1888.)

Complaint of defendant's refusal to receive, as a connecting carrier, freight sent over complainant's bridge.

The complainant company was a consolidation of an Indiana and a Kentucky corporation, chartered to build and operate a bridge across the Ohio River from New Albany, Ohio, to Louisville, Ky. In each state it had power to connect with railways, to condemn land, to build and operate a railway over the bridge, and to charge tolls.

About 1860 the Louisville Bridge Co. had built a bridge, and in 1872 the L. & N. had made a contract with the Louisville Bridge Co., the Ohio & Miss. R. R. and the J. M. & I. R. Co. (the two latter being roads from the north to the Indiana side of the bridge, and the L. & N. running southwest from Louisville) whereby they agreed to charge certain tolls, and that each railroad would send all its freight over the Louisville bridge. These three roads owned practically all the stock and bonds of the Louisville Bridge Co., and had built it for their own use. In 1886 the complainant company made an agreement with the Ohio & Miss. road whereby the latter agreed to send all its freight over the complainant company's bridge, and the complainant agreed to allow it the use of its bridge. There was a physical connection of complainant's tracks with the L. & N. at a point between two of the latter's four freight yards, but the L. & N. claimed that this was at an unreasonable and inconvenient place for receiving and handling exchange freight. This road admitted that it was bound to receive freight from the complainant company there, but only as a shipper from Louisville, and not as from a connecting carrier, claiming that complainant was not a common carrier. The L. & N. contended that to receive freight from the complainant would induce a violation of its contract with the other roads and with the Louisville Bridge Co., and that the freight offered by complainant company was really given to complainant by the Ohio & Miss. River road in violation of this contract. The charter of the L. & N. provided that it must allow other railroads to connect with it. It admitted that complainant company was a carrier *de facto* but not *de jure*. Complainant company owned five switching engines and ten passenger cars, but no freight cars. Defendant alleged also that the complainant company was not built in answer to a public demand, and was unnecessary, as the Louisville Bridge Co.'s bridge furnished ample facilities for all the traffic.

Held, (Cooley, Ch., for the majority), (a) that complainant was a common carrier, even though it owned no freight cars and that it was "used and operated in connection with" the Ohio & Miss. road within the meaning of the 3rd section of the Act;

(b) that when a common carrier was incorporated as such it was presumed to be from public necessity;

(c) that the point of connection with the L. & N., though not in a freight yard, was at a convenient and suitable point for the interchange of traffic;

(d) that defendant must allow complainant equal facilities as a connecting carrier to those allowed the other bridge company, and not merely the facilities allowed other shippers, but complainant must pay a share of the expense of the interchange of traffic;

(e) that the Act was not passed to destroy the obligation of contracts, and that this decision would not have that effect, since the L. & N. had full redress against the Ohio & Miss. road in the courts in case the latter broke its contract;

(f) that it was not possible for railroads to prevent the operation of the Act by alleging contracts made prior to its passage;

(g) that as the Ohio & Miss. road was not a party no order would issue as regards defendant's duty to make and publish through rates.

Ordered that defendant allow complainant equal facilities allowed to other carriers for the interchange of interstate traffic.

Schoonmaker, C., dissented, holding that the Act did not mean that every railroad must connect and make traffic arrangements with every other road, no matter how inconvenient, but that the Act contemplated an arrangement for continuous shipment already entered into; that the complainant was not a common carrier, but merely a *quasi* carrier, and was entitled to be treated merely as a shipper, that the Act should not be construed so as to destroy or induce the violation of contracts if possible, and that the claim in the present case was virtually one to force the defendant to put through rates in force.

57-B.—Kentucky & Indiana Bridge Co. v. Louisville & N. R. Co.,
et al. 37 Fed. 567; 2 Int. Com. Rep. 351; 2 L. R. A. 289;
C. C. D. Ky., (1889.)

Bill by Bridge Company to require defendant to allow to it, as a common carrier, facilities for the interchange of traffic equal to those allowed other carriers.

The facts are stated above in the proceeding before the Commission. It appeared that this proceeding was really instituted on behalf of the Ohio & M. R. R. Co., and its real object was to have the Ohio & M. R. R. Co. released from the obligation of the agreement of 1872, and also to secure for it a through route with the L. & N. without subjecting it to switching charges by other roads in Louisville, in addition to the charge exacted by the complainant.

Held, (Jackson, J.), (a) that the Interstate Commerce Act did not undertake either to create an "Inferior Court," or to invest the Commission appointed thereunder with judicial functions, so that the objection that the Act was unconstitutional in appointing judges who did not hold office during good behavior, was unsound;

(b) that the Commission was invested only with administrative powers of supervision and investigation, and its functions were those of referees, or special commissioners, appointed to make preliminary investigation and report upon matters for subsequent judicial examination and determination. "In respect to Interstate Commerce matters covered by the law, the Commission may be regarded as the general referee of each and every Circuit Court of the United States, upon which jurisdiction is conferred of enforcing the rights, duties and obligations recognized and imposed by the Act. It is neither a Federal Court under the Constitution, nor does it exercise judicial powers, nor do its conclusions possess the efficacy of judicial proceedings;"

(c) that the Act did not make the Federal Courts the mere executors of the Commission's order or recommendation so as to impose upon it a non-judicial power, the suit in Court under the Act being an original and independent proceeding in which the Commission's report was made *prima facie* evidence of the matters or facts therein stated, and the latter provision being merely the prescribing of a rule of evidence clearly within the well recognized powers of the legislature and in no way encroaching upon the Court's proper function;

(d) that the complainant was a common carrier of passenger traffic between New Albany and Louisville, but that such traffic was not involved in the present controversy;

(e) that the petitioner was not, in law or in fact, a common carrier of freight within the meaning of the Act, but in respect to freight, was merely a transfer company, engaged in performing a switching service, and as such could not invoke the provision of the Act entitling common carriers to relief for discrimination in favor of other common carriers;

(f) that the point of physical connection between the tracks of complainant and respondent was not a proper, suitable and convenient point for the interchange of freights between them, and in declining to deliver and receive freight at that point to and from complainant, respondent was neither discriminating improperly against complainant and the carriers using its tracks, nor giving the roads with which it interchanged traffic at its regular yards any undue or unreasonable preference or advantage;

(g) that when railroad companies, in compliance with their charter obligations, had provided themselves convenient, suitable and ample stations and depots for the accommodation of their business, the law imposed upon them no duty, either to the public or to other railroad lines, of making new station yards, or depots, even though such additional constructions might be for the convenience of the public or of other carriers;

(h) that a railroad company having suitable stations and freight yards was not bound to receive, either from shippers or other carriers, freight at points other than such station or freight yards;

(i) that the fact that the other roads, with which respondent had traffic arrangements, contributed to the expense of maintaining its yard, also rendered the circumstances and conditions different from those in the case of complainant, which did not offer to contribute to such expenses;

(j) that, although Congress possessed the power of requiring carriers to make arrangements for through routing and rates with connecting carriers, the Act did not impose upon the Commission or the Courts such power, and the fact that the respondent had entered into a contract with one or more connecting lines for through routes and rates, did not impose upon it the duty or obligation of making the same or like contracts with all other lines.

Petition dismissed.

Barr, J., concurred as regards the constitutionality of the Act and the position that complainant was not a common carrier and also agreed that at the point of physical connection between the tracks of complainant and respondent there were not proper and suitable facilities for the interchange of traffic, but declined to pass on the other questions not necessarily involved in this case.

58.—*Re Chicago, St. Paul & Kas. City R. Co.* 2 I. C. C. Rep. 231; 2 Int. Com. Rep. 55, 137. (Sept. 19, 1888.)

Petition for order on rival road to raise its Chicago-St. Paul rate and for leave to make an exception to Sec. 4 by reason of the competition of such road.

The petitioning road ran from Chicago to St. Paul via Oneida. The C. B. & N. road, in a rate war, had put on a 40c. first-class rate (reduced from 60c.), between Chicago and St. Paul and unless the petitioning road met this rate it would lose all its through traffic, which netted 25% of its gross revenue. The 40c. rate would yield a return more than covering the cost of the haul, though less than the total expense of operation including fixed charges, so that if all defendant's rates were put on this basis it must ultimately be bankrupt. The roads and shippers interested were heard by the Commission. The C. B. & N. claimed that by reason of its better equipment it could afford to give lower rates, but it was evident that its real reason was that it believed itself strong enough to stand the loss until it ruined the petitioner. On a 40c. basis, in order to comply with Sec. 4, the 40c. rate would begin 25 miles out of Chicago.

Held, (Clements, C.), (a) that though the 40c. rate was unreasonably and ruinously low, the Act gave the Commission no power to declare a rate unjust because too low, or to correct it, since the Act was passed to protect shippers and not carriers, and established maximum and not minimum limitations. (Schoonmaker, C., reserved his opinion on this point, also because the C. B. & N. was not here a party);

(b) that although the competition of carriers not subject to the Act might occasionally create the dissimilarity of conditions contemplated in the Act, such cases were rare and this was not one of them.

Petition dismissed.

59.—*Howell, et al. v. New York, L. E. & W. R. Co., et al.* 2 I. C. C. Rep. 272; 1 Int. Com. Rep. 467; 2 Int. Com. Rep. 162. (Sept. 24, 1888.)

Complaint of unreasonable milk rates from Orange County, New York, to Jersey City, N. J., and of preference of more distant points by blanket rates.

The four defendant roads transported milk by two special milk trains from Northern New York at 35c. per can of 40 quarts from all points, the nearest point being 21 miles and the most distant 183

miles from New York, while from Orange County points the distance was 30-80 miles. This system of milk rates had been in force for a long time. The two trains were very profitable to the railroads. Special men were employed at Jersey City to handle the milk, which arrived at midnight, and the trains carried a man in each car. These men were paid by the day and it was not possible for them to make two trips per day from Orange County. There was a market for all the milk brought in and it did not appear that complainants were injured by the fact that more distant shippers were enabled to send their milk to New York at the same rate as they. Complainants offered in evidence rates on other lines in comparison with those in question.

Held, (Walker, C.), (a) that the mere fact that the business in question was profitable to the railroads was not sufficient to determine the unreasonableness of the rates charged;

(b) that grouping was a convenient and often proper system of rate making, and was proper in this case;

(c) that in view of the fact that complainants were not materially prejudiced by the system, since some points taking the same rates as they were nearer, and some more distant than they, and in view of the fact that the rates offered for comparison were made under different circumstances from those in question, and of the fact that the difference in the cost of service to defendants between the longer and shorter hauls was trifling, no order would be made, but the question of the reasonableness of the rates would be reserved and complainants be given opportunity to present further evidence;

(d) (semble) that the rates in question were unreasonable. (For a discussion of the considerations in determining the reasonableness of a rate, see pp. 282-285.)

Morrison, C., dissented.

60.—Griffie v. Burlington & M. R. Co., et al. 2 I. C. C. Rep. 301; 2 Int. Com. Rep. 15, 31, 194. (Oct 8, 1888.)

Complaint of discrimination in passenger rates by giving a free pass to a discharged employee.

The pass was never used and was produced before the Commission as an unused instrument, the time limit for its use having expired.

Held, (Schoonmaker, C.), that no transportation having been had under the pass there was no violation of the Act.

Complaint dismissed.

61.—Spartanburg Board of Trade v. Richmond & D. R. Co., et al. 2 I. C. C. Rep. 304; 2 Int. Com. Rep. 15, 193. (Oct. 8, 1888.)

Complaint of rates to Spartanburg, S. C.

The tariffs filed showed in a number of instances higher rates to Spartanburg than to points more distant. Complainant presented no evidence, relying entirely on the tariffs.

Held, (Bragg, C.), (a) that a question involving the relative reasonableness of rates over such a large territory would not be determined merely on the face of the tariffs;

(b) that in presenting evidence to justify the rates *prima facie* contrary to the rule of Sec. 4, the burden of proof was on defendants.

Adjourned for 40 days to take evidence.

62.—*Detroit Board of Trade, et al. v. Grand Trunk R. Co., et al.* 2 I. C. C. Rep. 315; 1 Int. Com. Rep. 698, 701; 2 Int. Com. Rep. 199. (Oct. 22, 1888.)

Complaint of unreasonable rates between Detroit and the Atlantic Seaboard as compared to those between the Atlantic and more distant western points.

The Detroit rate to and from the Atlantic Coast was fixed at 78% of the Chicago rate, although the distance (short line) was but 70% of that from Chicago.

Held, (Bragg, C.), (a) that all rates should be relatively reasonable as well as reasonable *per se*;

(b) that a rate from a given point need not be as low as the proportion of a through rate via that point nor need rates be fixed on a mileage basis;

(c) that where changes in given rates would necessitate a change over a wide territory and cause widespread confusion and unsettling of values, they would not be ordered except in so far as they might require some necessary and unavoidable correction.

Complaint dismissed.

63.—*Savery v. New York Central & H. R. R. Co., et al.* 2 I. C. C. Rep. 338; 1 Int. Com. Rep. 695; 2 Int. Com. Rep. 210. (Nov. 9, 1888.)

Complaint by immigrant agent of defendant's refusal to permit him to do business with immigrants, of unreasonable rates charged to immigrants for themselves and their baggage from New York to the West, and of discrimination by lower charges to immigrants than to the general public.

A New York law had created an Immigration Board, under the direction of which the roads and steamship lines had made arrangements by which immigration agents were kept away from immigrants, who theretofore had frequently been defrauded by them. The rates complained of were reduced pending the decision of this case. These rates were considerably lower than the regular second-class passenger rates. Immigrants were taken in special trains with less comfortable accommodations than those on ordinary trains.

Held, (Cooley, Ch.), (a) that the Commission had no power to interfere with the regulations of the New York Board;

(b) that as the rates complained of had been reduced no order was necessary with reference to them;

(c) that special rates for immigrants were here proper since the service was special and there was no danger of other persons passing themselves off as immigrants and thus improperly securing the low rates. *Smith v. Northern Pac.* (28), distinguished.

Complaint dismissed.

64.—*Slater v. Northern Pac. R. Co.* 2 I. C. C. Rep. 359; 2 Int. Com. Rep. 298, 496. (Nov. 30, 1888.)

Complaint of refusal to continue annual pass to land-agent.

Slater, the complainant, found buyers for land of the defendant and for so doing, and for "throwing what business he conveniently could" in defendant's way for some years, they gave him an annual pass, in which he was described as an employee. Defendant also gave a trip-pass to a man named Fisher, in order that Fisher might go with Slater to see certain lands. When these passes were issued, defendant was advised by counsel that they were legal. After the decision in *Smith v. N. P. R. Co.*, (28), defendant gave no more such passes. Slater complained of the issuing of the pass to Fisher, it appearing that he did so by way of revenge for the cutting off of his own pass.

Held, (Walker, C.), (a) that both Fisher's and Slater's passes were illegally issued;

(b) that the railroad appeared to have acted in good faith on advice of counsel and to have corrected its misconduct promptly, and the Commission would not recommend that the United States authorities sue to recover the fine;

(c) that the Commission itself had no power to impose such a fine;

(d) that the position of the complainant was not such as to appeal to the Commission.

65.—*Re Relative Tank and Barrel Rates on Oil.* 2 I. C. C. Rep. 365. (1888.)

Explanation by the Commission of certain points in the decisions in *Rice v. Louisville & Nashville R. Co.*, (42), and *Scofield v. Lake Shore & M. S.*, (51.)

In these cases the complaint had been of a less charge per barrel on oil in tank-cars than in barrels, and it had been held that the charge should be the same per 100 pounds either way, but that the roads might charge for the weight of the barrel to compensate themselves for certain difficulties in this method of transportation. The P. R. R. was not a party to these cases and had been charging the same rate on oil whether in barrels or tank-cars, not including the weight of the barrel. After these decisions it put in effect a rule charging for the weight of the barrel, claiming that such was in compliance with the order and decision of the Commission in those cases.

Ruled, (By the Commission), (a) that the decision in the cases referred to did not apply to other roads not there represented and trans-

porting oil under different conditions, the evidence in those cases showing that no uniform rule was applicable to oil shipments throughout the country;

(b) that the former basis of charge by the P. R. R. was entirely correct.

66.—New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co., et al. 2 I. C. C. Rep. 375; 2 Int. Com. Rep. 289. (Nov. 26, 1888.)

Complaint of unreasonable cotton rates from Meridian, Miss., and from certain Louisiana points to New Orleans, as compared with rates to New York and eastern points, and of discrimination against New Orleans thereby.

The rate on compressed cotton complained of was \$2.00 per bale, or \$4.08 per ton mile for a haul of about 200 miles. The rate to New York was 78c. per ton mile by one route and \$1.01 by another for a haul of about 1700 miles. Complainants asked that the New York per ton mile rate be applied to the haul to New Orleans. All the roads responsible for certain of the through rates in issue were not parties. One of the rates complained of was for a haul beginning and ending in Louisiana, but passing through Mississippi. Of late years new through lines had been constructed to eastern ports and the distribution of cotton, which had formerly been done almost exclusively at New Orleans, was now largely carried on at other ports, and also at small interior towns. Defendants had lately been earning more than enough to pay operating expenses, but not enough to pay fixed charges.

Held, (Morrison, C.), (a) that it was entirely settled that the per ton mile rate should decrease as the distance increased and the rate per ton mile for a 1700 mile haul was no basis for that in a haul of 200 miles;

(b) that the reasonableness of through rates could not be determined in the absence of some of the roads responsible for and directly interested in them;

(c) that the haul beginning and ending in Louisiana but passing en route through Mississippi was interstate and not intrastate commerce;

(d) that in determining the reasonableness of rates the fact that a road was earning little more than operating expenses was not to be overlooked, but this fact could not justify rates greatly excessive, and when there were more roads than the business at fair rates would remunerate they must rely on future earnings for return of investments and profits;

(e) that the rate from Meridian was excessive and should not exceed \$1.50 per bale.

Order accordingly.

67.—**Rice, Robinson & Witherop v. Western N. Y. & P. R. Co.** 2 I. C. C. Rep. 389; 1 Int. Com. Rep. 717, 792, 795, 811; 2 Int. Com. Rep. 298, 496. (Nov. 30, 1888.)

Complaint of unreasonable rate on oil from Titusville, Pa., to Buffalo, N. Y., as compared with the rate in force before the passage of the Act, and as compared with the proportion of through sea-board rates.

Prior to the Act the rate had been 25c. per barrel, but rates from intermediate points had been higher and after the passage of the Act the rate to Buffalo had been raised to 34c. per barrel, this rate extending from a point 28 miles distant from Titusville, to Buffalo, 120 miles distant. The division of the through rate to Perth Amboy, N. J., received by defendant in the haul from Titusville to Buffalo, was 12c. There was a pipe line to Buffalo, owned by private parties, which could take oil there very cheaply from points near Titusville.

Held, (Schoonmaker, C.), (a) that it was not a violation of the Act for a road to accept less than a local rate as its division of a through rate;

(b) that in a case where a change of rates would unsettle the rate relation of a large territory such change would not be ordered unless based on clearly adequate grounds;

(c) that the fact that others could get oil to Buffalo cheaply by their pipe line did not necessitate a reduction by defendant of its rates, though this might justify a reduction.

Complaint dismissed.

Leave given to open case for further evidence; 3 I. C. C. Rep. 87, 1889.

68-A.—**Goodridge v. Union Pac. Ry. Co.** 37 Fed. 182. (Jan. 9, 1889.) C. C. D. Colo.

Action by coal shipper for treble damages under Colorado Statute for discrimination in intrastate rates in favor of a rival shipper.

For facts see 68-B, *infra*.

Held, (Hallet, J.), (a) "When the consideration paid for reduced rates by the favored shipper is obviously equal to the discount allowed him, the law does not apply," but in the present case "the whole answer amounts to this: that the Marshall Company is allowed less rates than other shippers are required to pay upon considerations which are satisfactory to defendant. And it is obvious that this is no answer to a complaint of unlawful discrimination."

Demurrer sustained.

(Question as to 200,000 tons a year not discussed.)

68-B.—**Union Pacific Ry. Co. v. Goodridge.** 149 U. S. 680; 13 S. Ct. Rep. 970; 38 L. Ed. 986. (1893.)

Error to C. C. D. Colo. entering judgment for plaintiff Goodridge in an action for treble damages under a Colorado Statute for un-

just discrimination in favor of competing coal dealers in intrastate rates on coal.

Defendant alleged, in justification of a rebate of 40c. per ton allowed the Marshall Coal Co., first, that it had an agreement with that Company to allow it a rate of 60c. instead of \$1.00 (the rate allowed plaintiff) if it furnished 200,000 tons per annum, (but there was no allegation that this amount had been furnished by the Marshall Company); second, that the special rate was in consideration of the settlement of an unliquidated claim by the Marshall Company against the Union Pacific Ry. Co., for damages. As regards the latter point, the claim alleged was very indefinite.

Held, (Brown, J.), (a) that although a fixed annual shipment might justify a special rate, the omission to allege that such shipment was in fact made was here fatal;

(b) that although the settlement of a liquidated indebtedness might justify a fixed rebate in favor of the creditor, such was not the case where, as here, the claim alleged was an unexplained, indefinite, and unadjusted claim for damages arising from a tort, as this would lead to easy evasion of the Statute.

Judgment affirmed.

69.—*Rend v. Chicago & N. W. R. Co.* 2 I. C. C. Rep. 540; 1 Int. Com. Rep. 793, 812; 2 Int. Com. Rep. 313. (Jan. 26, 1889.)

Complaint of unreasonable soft coal rates from Ohio and Pennsylvania mines to St. Paul and the Northwest via Chicago and of preference of Illinois mines.

Complainant owned soft coal mines in Ohio and Pennsylvania, shipping to the northwest. The rate was \$2.00 per ton to Chicago, plus \$1.75 from Chicago to St. Paul, no lower through rate being established (with one inconsiderable exception.) Illinois coal was taken to St. Paul from the whole region around Chicago at \$1.75 per ton, and the competing roads serving this region so interlaced that to prescribe a different rate from any part of the region would produce the greatest confusion, some roads carrying the coal by way of Chicago, while others ran from Chicago through the mining district en route to St. Paul. One of the roads which ran east from Chicago had a through rate with defendant from Illinois points by which it received 35c. per ton for the haul to Chicago and defendant received \$1.40 from Chicago to St. Paul. Complainant demanded that defendant be required to haul his coal, from Chicago to St. Paul, at a rate of \$1.35. Complainant's coal was of a higher grade and commanded a higher price than the Illinois coal.

Held, (Walker, C.), (a) that the rates from Ohio and Pennsylvania mines were not *per se* unreasonable;

(b) that in considering the relative reasonableness of these rates and those from Illinois points the Commission took broader grounds than the mere balancing of one rate against another, and kept in view the entire field affected and not merely the part of it from

which defendant received less than \$1.75 as its division of the rate from Chicago to St. Paul;

(c) that no changes, in a case like the present, involving as they would the greatest confusion in an intricate system, would be made unless it appeared that substantial injustice was being done by the present system, as did not here appear;

(d) that the Illinois rate group was a reasonable one;

(e) that complainant's real difficulty was his geographical location at a greater distance from the Northwest, and this it was not the Commission's province to equalize as against his better situated competitors in Illinois.

Complaint dismissed.

70-A.—United States v. Tozer. 37 Fed. 635; 2 Int. Com. Rep. 422, 540, 597; 2 L. R. A. 444n. D. C. E. D. Mo. E. E. (Feb. 6, 1889.)

Demurrer to indictment against an agent of a railroad for granting discriminations in violation of Sec. 2, preferences in violation of Sec. 3, and for departing from established rates in violation of Sec. 6 of the Act.

The discriminations and preferences relied on were in favor of the C. B. & Q. R. Co. against the Hayward Grocery Co. The railroad was charged a less rate than the merchant.

Held, (Thayer, J.), (a) that in an indictment for violating Sec. 2, it was not necessary to allege that the discrimination was granted by means of a special rate rebate or drawback or other device, it being immaterial how the discrimination was effected;

(b) that in an indictment under Sec. 3, it was not necessary to allege that the services were performed under substantially similar circumstances and conditions, it being sufficient to show with requisite certainty by any apt language that the accused had committed an act giving one shipper, or class of shippers, an advantage or subjected others to a disadvantage;

(c) that the fourth count was bad since it did not aver with certainty the points from which the shipments relied on originated;

(d) that the count with reference to Sec. 6 was good;

(e) that in an indictment against a railroad agent, it was not necessary to allege that the particular acts complained of were done under the direction or authority of the principal, it being sufficient to allege that defendant was the carrier's general agent in charge of its office at the point of shipment;

(f) that it was a violation of the Act to discriminate in favor of another railroad company.

70-B.—United States v. Tozer. 39 Fed. 369. D. C. E. D. Mo. N. D. (1889.)

Charge to jury in foregoing.

It appeared that the facts relied on were a less charge to a con-

necting line for hauling each of 2 barrels of sugar from Hannibal, Mo., to Helper, Kas., as part of a through haul from Chicago, than the local rate charged a merchant shipping one barrel from Hannibal two days later.

Held, (Thayer, J.), (a) that the fact that one party was a larger shipper than the other did not justify the discrimination;

(b) that the fact that one shipment was part of a through shipment and the other a local one rendered the circumstances in the two cases substantially dissimilar under Sec. 2, but that the jury were at liberty to determine whether or not the difference in the rates of 34c. and 46c. was undue or unreasonable under Sec. 3.

Convicted on second and third count under Sec. 3.

70-C.—United States v. Tozer. 39 Fed. 904. C. C. E. D. Mo. N. D. (1889.)

Motion for new trial and arrest of judgment.

It appears from the opinion that the Hayward Grocery Co., at Hannibal, Mo., had ordered two barrels of sugar from their brokers at Chicago, to be shipped to one Viets, at Hepler, Kas. Their brokers shipped this via the C. B. & Q. R. Co. On the through bill of lading issued by the latter it reserved the right to route the sugar beyond its own line, from Hannibal, Mo., to Hepler. It accordingly forwarded it from Hannibal by the Mo. Pac. R. Co., of which defendant was the agent at Hannibal. By the arrangement between the two roads the through rate from Chicago was the local rate from Hannibal (46c.) with 5c. added, but the Mo. Pac. R. Co. retained as its share of the total rate only 34c. Two days later the Hayward Grocery Co. shipped one barrel of sugar from Hannibal to the same consignee at Hepler at the local rate of 46c.

Held, (Thayer, J.), (a) that the two shipments were not for the same party, that at the through rate being for the C. B. & Q. R. Co.;

(b) that Sec. 3 of the Act related not solely to facilities afforded shippers, but to rates as well;

(c) that the public was concerned with the division of joint rates among shippers and an undue difference between the division of a joint rate and a local rate between the same points constituted an undue preference;

(d) that whether or not the difference between the two rates was reasonable was a question of fact for the jury.

Motions overruled.

70-D.—Tozer v. United States. 52 Fed. 917. (1892.) C. C. E. D. Mo. N. D.

Error to foregoing.

Held, (Brewer, Cir. Just.), (a) that no comparison might be drawn between the local rate of a railroad and its proportion of a through rate between the same points in connection with another carrier;

(b) that for a railroad to charge a higher local rate between cer-

tain points than its share of a through rate between the same points did not constitute a violation of Sec. 3;

(c) that an Act under which criminality depended on so indefinite a consideration as the finding of a jury as to whether or not a rate relation is reasonable or unreasonable, is too indefinite for enforcement as it would be impossible for a party to determine in advance whether acts contemplated by him were criminal or not.

Judgment reversed.

71.—Milwaukee Chamber of Commerce v. Flint & P. M. R. Co., et al. 2 I. C. C. Rep. 553; 1 Int. Com. Rep. 774, 792; 2 Int. Com. Rep. 393. (Feb. 19, 1889.)

Complaint of discrimination against Milwaukee and preference of Minneapolis over Milwaukee in rates on wheat and flour to the east.

Defendants ran east from Milwaukee. The rate on wheat and flour to New York was 25½c. per 100 pounds. Prior to February, 1888, the rate from Minneapolis to New York had been 30½c., being the rate from Milwaukee plus the 5c. which the roads which ran from Minneapolis to Milwaukee charged on all shipments destined to points beyond Milwaukee irrespective of destination. In February, 1888, in response to a reduction by the Soo Line, defendants agreed to receive 23c. as their share on shipments from Minneapolis, making the total rate 28c., while Milwaukee flour still had to pay 25½c. Complainant contended that the Minneapolis rate was not a through rate since the roads from Minneapolis to Milwaukee did not receive a stated proportion thereof but in every case 5c. irrespective of destination, and that to charge less on shipments which had come from Minneapolis was an unlawful discrimination against Milwaukee. The roads east of Milwaukee received a fixed per cent. of the rate. The shipments from Minneapolis went through on through bills of lading, at a total fixed rate with a way-bill attached giving the routing.

Held, (Bragg, C.), (a) that through rates assumed a great variety of forms and were favored by the law;

(b) that the shipment from Minneapolis was a through shipment at a through rate, and the proportion east of Milwaukee might properly be less than on freight originating there;

(c) that although such difference should always be reasonable, it was so in this case.

Complaint dismissed.

72.—Myers v. Pennsylvania Co. et al. 2 I. C. C. Rep. 573. (Feb. 23, 1889.)

Complaint of unreasonable rate and classification on certain bitters from Chicago to the east.

Complainant manufactured Hostetter's Stomach Bitters, at Pittsburgh, Pa., and shipped them to the east. Prior to the passage of the Act in 1887, he had a special contract with defendants, whereby

they took his product at 4th class rates in carloads, and 3rd class in less than carloads, the rates on bitters to most shippers being 1st class; after the passage of the Act complainant was charged 1st class rates in carloads, and double 1st class in less than carloads, but after this petition was filed this was changed to 3rd class in carloads and 1st in less than carloads (1st class rates having been reduced, however, to a figure below what the 2nd class rates were before 1887.)

Held, (Schoonmaker, C.), (a) that prior to 1887 complainant enjoyed exceptional advantages for which there was no apparent reason, and that his bitters had been since placed in the proper class, the passage of the Act having given rise to certain necessary and unavoidable hardships;

(b) that double 1st class rates in less than carloads were unreasonable so that when the petition was filed there was cause for complaint, but that this had since been removed.

Complaint dismissed.

73.—Lippman & Co. v. Illinois Cent. R. Co. 2 I. C. C. Rep. 584; 2 Int. Com. Rep. 414. (1889.)

Complaint of acceptance by defendant, as its division of through rates on cotton from more distant points, a less amount than its local charge from Yazoo City to New Orleans.

The rate from Yazoo City to New Orleans was \$1.85 per bale. This was a group rate extending to points further north and in hauls from certain of such points the steamboat companies received 60c. as their division of the through rate, defendant getting \$1.25.

Held, (By the Commission), (a) that local rates could not be the measure of what a railroad should accept as its division of through rates;

(b) that a railroad was under special obligation to give reasonable rates for its local business;

(c) that a grouping of points such as here appeared was entirely proper and a situation such as this became illegal only when it could be shown that illegal results followed from it.

(d) that no hearing was here necessary.

74.—Michigan Congress Water Co. v. Chicago & G. T. R. Co. 2 I. C. C. Rep. 594; 2 Int. Com. Rep. 12, 428; 1 Int. Com. Rep. 797. (Mar. 23, 1889.)

Complaint of unreasonable rates on mineral water from Lansing, Mich., of unreasonable refusal to transport complainant's private car, and of combined action with other carriers to prevent complainants from securing fair and reasonable rates and service.

The other roads participating in the through rates complained of were not parties. The refusal to transport the car in question was based on the fact that it had but recently returned from a long

journey and on inspection was found unfit for service until repaired.

Held, (Bragg, C.), (a) that in the absence of the other roads the Commission could not enter into the investigation of rates to which they were parties;

(b) that the refusal to transport the car in question was justified and any declarations by defendant's station agent to the effect that it was ready for service were unauthorized and not binding on defendant;

(c) that after the return of a private car from a long journey it was the duty of the road, before permitting it to go out again, to have it thoroughly inspected, and it was complainant's duty to put it in proper repair.

Complaint dismissed.

75.—Logan, et al. v. Chicago & N. W. R. Co. 2 I. C. C. Rep. 604. (Mar. 22, 1889.)

Complaint by Iowa grain shippers of unreasonable grain rates from certain Iowa points to the east and of preference of Nebraska shippers.

Defendant's line ran from Council Bluffs, Iowa, to Chicago. From Sioux City, Iowa, to Chicago, there were two branches, the northern, which was in competition with another road, and the southern, along which there was no competition. On the northern branch rates were somewhat lower than on the southern. Also the rates from some intermediate points on the southern branch were higher than those from Sioux City over either branch. Over the northern branch (main line) there was a special low corn rate from Nebraska points to Turner, Ill., when such corn was destined to the sea-board, this rate not being applicable to shipments from Iowa points on the northern branch, and no similar rate being in force from points on the southern branch. Such seaport grain was necessarily rebilled at Turner.

Held, (Morrison, C.), (a) that although where a railroad departed from equal mileage rates over its line the burden was on it to justify the higher rates, yet it was not illegal to charge higher rates over a branch line than those over the main line where competition existed with other roads;

(b) that the rates over the southern branch which exceeded those from Sioux City were in violation of Sec. 4;

(c) that the corn shipments from Nebraska points to Turner were in no sense through shipments, although probably destined farther east;

(d) that to allow to Nebraska shippers the special rate to Turner, and to refuse it to Iowa shippers was an undue preference of the former, and rates should be adjusted accordingly.

76.—**Imperial Coal Co., et al. v. Pittsburgh & L. E. R. Co., et al.**
2 I. C. C. Rep. 618; 2 Int. Com. Rep. 18, 92, 210, 436. (Mar.
23, 1889.)

Complaint of preference in coal rates to Lake Erie points in the rate group in which complainant's mines were situated, more distant than complainant's mines.

This group of mines near Pittsburgh Pa., was about 80 miles wide, complainant's mines being about in the middle. The rate from all points in the group to Cleveland and the Lakes was 90c. per ton, yielding $5\frac{1}{2}$ to $6\frac{1}{2}$ mills per ton mile. It appeared that two of the defendants received a greater amount as their division of a certain through rate for a lesser haul over their lines than for a longer haul as part of another through rate.

Held, (Schoonmaker, C.), (a) that grouping of localities in respect to rates was proper if not carried to too great an extreme, having been recognized by the English Act of 1888 and by the Federal decisions;

(b) that a reasonable disregard of geographical position in rate making was often proper, distance being an important factor, but by no means the sole consideration in making rates;

(c) that under Sec. 4, rates as an entirety must be relied on to make out a violation of the Act and not merely the divisions of through rates;

(d) that the rates being *per se* reasonable complainant was not unduly prejudiced in not being able to realize a higher profit than his more distant competitors.

Howell, et al. v. New York, L. E. & W. R. Co., (59), followed.

Complaint dismissed.

77.—**Little Rock & M. R. Co. v. East Tenn., Va. & Ga. R. Co., et al.**
3 I. C. C. Rep. 1; 2 Int. Com. Rep. 130, 191, 232, 454.
(Mar. 25, 1889.)

Complaint by a common carrier of refusal by defendants to establish or allow through rates and a through route by its line.

Complainant's road ran from Memphis, Tenn., to Little Rock, Ark., crossing the Mississippi River by ferry at Memphis, and connecting with the defendant, the St. Louis & Iron Mountain road, at Little Rock. Complainant's cars were hauled through Memphis by the defendant, the East Tenn., Va. & Ga. R. Co., which connected with complainant to the east. The St. Louis & Iron Mountain had recently built a branch from a point on its line 57 miles west of Little Rock to Memphis, and in order to divert traffic over this branch (which is 15 miles longer than via complainant's road) it notified the East Tenn., Va. & Ga. that through tickets via the complainant's road would not be honored by it at Little Rock.

Held, (Walker, C.), in an opinion reviewing the English Act as amended so as to give the English Commission power to require carriers to give connections to other carriers where the public interest

demanding it, that although the Act to Regulate Commerce was modelled on the English Act and was intended to produce the same result, nevertheless, as Congress had not provided any means by which this Commission might enforce the required result, it was powerless in this case to grant the necessary relief, even though the public interest here clearly demanded it.

Complaint dismissed, with a recommendation that Congress amend the Act.

78.—Re Grand Trunk Ry. of Canada. 3 I. C. C. Rep. 89; 2 Int. Com. Rep. 496. (Apr. 18, 1889.)

Informal complaint by the Michigan Central R. Co. of transportation of freight by the Grand Trunk R. R. of Canada from points in the United States to points in Canada for large shippers at less than tariff rates.

The Grand Trunk was engaged in the transportation of coal by continuous shipment from points in New York to points in Canada. The tariff rate being \$1.00 per ton, certain large shippers were allowed a 75c. rate. The Grand Trunk contended that complainant had no interest which entitled it to institute these proceedings; that the Act did not apply to the traffic in question but extended merely to traffic carried to the boundaries of the United States and not to traffic going into a foreign country; and that large shippers were entitled to lower rates than small ones.

Held, (Schoonmaker, C.), (a) that under Secs. 12 and 13 of the Act neither a formal complaint nor direct damage to a complainant was necessary to give jurisdiction to the Commission;

(b) that as to the traffic in question the Grand Trunk was subject to the provisions of the Act;

(c) that in charging less than its published rates this road had violated Sec. 6 of the Act, and should desist therefrom forthwith.

Order accordingly.

79.—Heard v. Georgia R. Co. 3 I. C. C. Rep. 111; 2 Int. Com. Rep. 392, 508. (May 8, 1899.)

Complaint of discrimination against complainant, a negro, in accommodations on passenger trains.

Complainant had bought a first-class ticket from Philadelphia, Pa., to Atlanta, Ga., via Augusta, Ga. At Augusta, where he took defendant's train, he was not permitted to ride in the rear car reserved for white persons. This car was new, with separate water-closets for men and women, while the colored car was divided in half, one end being for smoking. This car was reversed on each trip so that the ends were used alternately for smoking. It had no separate closet for women, was unclean, smelt of tobacco, and was thick with smoke, as the partition door was often open. During the trip two men had frequently come in from the smoking compartment and drunk whiskey out of the water cup, once with the conductor of the car, in spite of the complainant's protest to him. There were

respectable colored women in the car with complainant. Defendant contended that there were not sufficient colored passengers to warrant its using an entire car for them. Complaint was not made specifically of discrimination in lack of adequate protection to complainant by the conductor.

Held, (Bragg, C.), (a) that railroads should give equal accommodation and protection to all passengers paying the same fares;

(b) that although complaint was not made specifically of discrimination in lack of proper protection by the officials of the road, yet such appearing from the evidence, under Sec. 15 the Commission would take notice of it.

Order in accordance with foregoing findings.

80.—**Cowan v. Bond.** 39 Fed. 54; 2 Int. Com. Rep. 542. (May 21, 1889.) C. C. S. D. Miss. E. D.

Action against receiver for damages for discrimination.

Wells & Co., cotton shippers at Delhi, La., shipped cotton from there to eastern points via Vicksburg, at the regular Delhi rate, the cotton being stopped off at Vicksburg and compressed there at the expense of the carrier. This privilege was well known to all shippers and it was not alleged that complainant had wished to avail himself of it at Delhi or been damaged from not knowing of it. He had shipped cotton east from Greenville, Miss., via Vicksburg, the cotton being compressed free at Greenville, under the same custom. It appeared that cotton from points west of Vicksburg, though inferior, was passed off by shippers as Vicksburg cotton.

Held, (Hill, J.), (a) that no discrimination against the complainant appeared, nor damage to him;

(b) (semble) that had it appeared that Wells & Co. had been told of the unpublished privilege and that complainant had been damaged by not having been told of it, he would have a right of action;

(c) that the fraud on consignees was not chargeable to defendant. Petition dismissed.

81.—**Sanger v. Southern Pac. Co., et al.** 3 I. C. C. Rep. 134. (June 24, 1889.)

Complaint of unreasonable passenger rate from San Francisco, Cal., to Ft. Leavenworth, Kas., by reason of representations of defendant's agent, and demand for refund of excess.

Complainant on inquiring for rates to Ft. Leavenworth and New York believed that he was told that it was as cheap to get tickets to Ogden, Utah, and there purchase tickets for the rest of the journey. The agent at Ogden refused to give him transportation at the balance of the through rate and he was compelled to pay \$52.30 in excess of what he would have paid for a through ticket.

Held, (Cooley, Ch.), that it was proper that defendant refund the excess.

82.—New York Produce Exchange v. New York Central R. Co., et al. 3 I. C. C. Rep. 137; 2 Int. Com. Rep. 13, 28, 553. (June 19, 1889.)

Complaint of less charge on inland shipments of exports than for similar goods destined to the seaboard, and of improper publications of export rates.

Up to Nov. 4th., 1887, the roads from the West to the Atlantic Seaboard had charged a fixed rate to the seaboard and the foreign rates were made by adding to this fixed rate the fluctuating ocean rate. On that date they adopted a system by which the through foreign rate was fixed at the average of the inland rate plus the ocean rate from all sea-ports, and under the latter system only the through foreign rate was published, the inland proportion of the roads not being published and varying inversely with the ocean rate so as to produce the total published through rate, the inland rate in some cases being only 50% of the domestic rate to the sea-board. By order of the Commission of March 8th., 1888 the roads were directed to publish the sum received for the haul to the sea. On Feb. 20, 1888, the roads went back to the old system, making the through foreign rate the sum of the fixed seaboard rate and the fluctuating ocean rate. The P. R. R. and other roads protested against this system and the complainants insisted on it. Ocean rates always varied in accordance with the space to be filled as the sailing day approached. The real question in the case was the propriety of a less charge for the haul to the seaboard as part of a through export shipment than on a purely local shipment, or on one where the shipper found his own ship and did not bill the freight through from the interior. The last class of shipments greatly exceeded in amount the through shipments. The cost of service to the roads in each case was practically the same, for the lighterage charges about equalled terminal expenses.

Held, (Schoonmaker, C.), (a) that experience had shown that the only proper method of making and publishing through foreign rates was at a fixed inland rate, not less than the local seaboard rate, added to the variable ocean rate;

(b) that the Act did not permit a departure from a published inland rate by reason of the fluctuation of that charged by the ocean carriers; (except in certain cases, p. 174);

(c) that conditions justifying a less proportion of the through foreign rate to the seaboard than the local rate did not exist in this case and there was no authority allowing the Commission to require a different method of publication from that heretofore ordered.

Order accordingly.

83.—Rice v. Cincinnati, W. & B. R. Co., et al. 3 I. C. C. Rep. 186; 2 Int. Com. Rep. 507, 584. (July 20, 1889.)

Application for *subpoenas duces tecum* in a case pending with regard to discrimination in oil rates, to require the production of books

and papers by the officers of various oil companies (Standard Oil) and by those of the various railroads.

Held, (Bragg, C.), in an opinion discussing the requisites in each case for the granting of such a subpoena, that the relief would not be granted here.

Application dismissed without prejudice.

84.—*James & Abbott v. East Tenn., V. & G. R. Co., et al.* 3 I. C. C. Rep. 225; 2 Int. Com. Rep. 436, 490, 609. (Sept. 25, 1889.)

Complaint of lumber rates from Johnson City, Tenn., to Boston, of preference of Atlanta, Ga., a more distant point and of violation of Sec. 4.

The rate from Johnson City was 36c. per 100 pounds, while that from Atlanta, 300 miles more distant on the same line, was 34c. In defence of the rate, defendants alleged that rates from Atlanta were controlled by low rates fixed by the Georgia Commission from Atlanta to the coast, together with low rates by sea to Boston from Georgia ports; that there was a surplus of empty cars from Georgia which came from New England loaded with machinery; that Atlanta lumber had already paid a local rate from the lumber district, and that the Johnson City lumber was the more valuable.

Held, (Morrison, C.), (a) that the Johnson City rate was unreasonably high, as appeared from the much lower proportion which defendants accepted as their division of through rates from points near Johnson City;

(b) that the water competition, surplus of empty cars, etc., alleged might justify a lower rate from Atlanta, but could not justify an unreasonably high one from Johnson City;

(c) that a rate of 29c. from Johnson City was reasonable and any rate exceeding 33c. unreasonable.

Order accordingly.

85.—*Leonard v. Chicago & Alton R. Co.* 3 I. C. C. Rep. 241; 2 Int. Com. Rep. 416, 491, 599. (Sept. 25, 1889.)

Complaint of defendant's refusal to continue to allow cattle shipments at a stated rate per car irrespective of weight, and of unreasonable rates on cattle.

Formerly the above practice had been in force but defendant had changed it, charging a given rate for a minimum carload, less than the actual capacity of the cars, with a given rate per 100 pounds for all over the minimum shipped in any car. The State Railroad Commissions allowed the old method of charge.

Held, (Cooley, Ch.), (a) that the evidence was too inconclusive to warrant a finding as to the reasonableness of the rate;

(b) that although this Commission respected the views of State Commissions, it was not bound by their decisions;

(c) that the new method of charge was more reasonable than the

old, since the rate resulting was more in accordance with the actual service rendered.

Complaint dismissed.

86.—**McMorran, et al. v. Grand Trunk Ry. of C., et al.** 3 I. C. C. Rep. 252; 2 Int. Com. Rep. 14, 19. (Sept. 25, 1889.)

Complaint of unreasonable rates on grain and grain products from Port Huron, Mich., to Buffalo, N. Y.

The grain rate in question was 8c. per 100 pounds, and that on grain products 10c., the former having been recently reduced from 10c. Prior to the passage of the Act it had been 6c. to 7c. The rate from Chicago to Buffalo was 15c., and from Chicago to Port Huron 9c., although the latter distance was 335 miles and that from Port Huron to Buffalo was but 196 miles. The 8c. rate included a terminal switching charge, a ferry charge over the St. Clair River and a toll over the Niagara Bridge.

Held, (Schoonmaker, C.), (a) that where rates were on their face disproportionate and unequal the burden was on the carrier to justify them;

(b) that if it were not for the above extra charges the 8c. rate might be *prima facie* excessive in view of the 9c. rate for the much greater distance from Chicago to Port Huron, but that under the circumstances the 8c. rate appeared to be a proper one;

(c) that the per ton mile charge under the through rate from Chicago to Buffalo was not a test for that of the local rate from Port Huron;

(d) that no reason appeared why the rate on grain products should exceed that on grain, and that the rate on products should be reduced to 8c.

87.—**United States, ex rel. Morris v. Delaware L. & W. R. Co.** 40 Fed. 101; 2 Int. Com. Rep. 617; C. C. N. D. N. Y. (Oct. 18, 1889.)

Demurrer to return of application for mandamus to compel respondent to transport cattle in cars of the American Live Stock Transportation Co., the co-relator, while transporting them for other shippers in those of the Lackawanna Live Stock Express Co.

The answer alleged that respondent had an arrangement with the latter company whereby it agreed to use its stock cars, which were more convenient than those of the American Co., as the Lackawanna cars could also be used as coal cars. The latter were available equally to all shippers.

Held. (Wallace, J.), that the discrimination was not unjust as the circumstances and conditions in the two cases were not substantially similar.

88.—**White v. Michigan Central, et al.** 3 I. C. C. Rep. 281; 2 Int. Com. Rep. 551, 641. (Dec. 1, 1889.)

Complaint of illegal practice by defendant in receiving grain at its elevator.

Complainant was a farmer on the line of defendant, an interstate carrier. Defendant operated an elevator, and was accustomed to take grain from farmers after sale, giving the farmer a receipt on which he could collect from the buyer. Defendant's custom was to make out a receipt for from 5 to 10 pounds less than the actual weight, the difference being charged for the railroad's trouble in handling the grain, etc. Complainant alleged that this custom was illegal, and asked that the defendant be compelled to refund. The case was put down by defendant, under Rule V, for hearing on complaint, as there was no allegation that the grain was for transportation anywhere and no improper act was alleged since the Act went into effect.

Held, (Veazey, C.), that complaint must be dismissed as if on demurrer.

89-A.—Bates v. Pennsylvania R. Co. & Pa. Co. 3 I. C. C. Rep. 435; 2 Int. Com. Rep. 608, 732, 734, 715; 3 Id. 296. (Feb. 7, 1890.)

Complaint of discrimination and preference in favor of eastern millers of corn over those at Indianapolis, Ind., by unreasonable differential in favor of corn against corn products in shipments east from Indianapolis.

Complainant manufactured hominy at Indianapolis and had built an extensive plant there relying on the continuance of the equal rates on corn and the products thereof in force at the time. In July, 1889, however, the B. & O. had reduced the rate on corn from 23c. per 100 pounds to 18½c., without any reduction in that on products, and the other roads from Indianapolis, including defendant's, had followed suit. This made it cheaper to mill the corn at New York, with reference to sales at the Atlantic Seaboard. The rates in question were really parts of through rates from Chicago of 25c. and 20c. Defendant's alleged water competition in shipment of corn and not of products by way of Lake ports, 154 to 324 miles north. There was no allegation that the rate on products was unreasonable.

Held, (Veazey, C.), (a) that the competition by water shown was too remote to affect the traffic in question;

(b) that it was no justification of the rates in question that each was open to all shippers since the Act forbade discrimination between competing commodities;

(c) that although the Commission would not hesitate to change a clearly illegal rate or rate relation merely because some one had built up his business relying on its continuance, such fact in this case was important as showing the material injury to complainant from the change of a relation formerly proper;

(d) that the rates on corn and its products should be the same.

Order accordingly against defendants and case retained in order to cite as parties the other six roads leading from Indianapolis.

89-B.—Bates v. Pennsylvania R. Co., et al. 4 I. C. C. Rep. 281; 2 Int. Com. Rep. 608, 732, 734, 715; 3 Int. Com. Rep. 296. (Nov. 22, 1890.)

Rehearing of foregoing case.

Complainants were manufacturers of corn products at Indianapolis, and contended that the rates east to seaports should be the same on corn and its products. It was so ordered (see preceding case) and the differential of $4\frac{1}{2}$ c. was abolished. A rehearing was ordered, it appearing that other roads were interested. The roads then made the rate 21c. on products, and $18\frac{1}{2}$ c. on corn. It appeared that it cost the railroad company less to load and unload corn than it did to handle products, because of the use of corn elevators; also, that there was water competition in corn, which did not exist as to products.

Held, (Veazey, C.), (a) that the rate on corn would not be raised, nor would that on products be reduced, since both were reasonable;

(b) that the original order would be vacated, and no new order made.

90.—Chicago, R. I. & Pac. R. R. Co. v. Chicago & A. R. Co. 3 I. C. Rep. 450; 2 Int. Com. Rep. 581, 721. (Feb. 14, 1890.)

Complaint of charge by defendant of less than its published rates.

Complainant's line ran through Kansas City from the west to Chicago, while defendant's ran only from Kansas City to Chicago. For some years all the roads out of Kansas City had permitted cattle shippers to unload cattle at Kansas City, "try the market" there, and if they desired, reship to Chicago at the balance of the through rate. In many cases other cattle might be substituted and shipped at the low rate. Complainant, while claiming the right to continue this practice on its line, contended that defendant was not entitled to haul cattle to Chicago at a similar rate on production of expense bills by shippers into Kansas City over other lines.

Held, (Cooley, Ch.), (a) that the Commission would not pass on the legality of the whole practice since no one complained of it;

(b) that the shipments in question from Kansas City to Chicago were strictly local shipments and in no sense parts of through shipments from points farther west;

(c) that if defendant were violating the law, complainant was equally at fault and entitled to no protection.

Complaint dismissed.

91-A.—Pittsburg, C. & St. L. R. Co. v. Baltimore & O. R. Co. 3 I. C. C. Rep. 465; 2 Int. Com. Rep. 572, 729. (Feb. 21, 1890.)

Complaint by competing line of party rates allowed by defendant

for ten or more passengers and of defendant's refusal to publish and post excursion rates.

Defendant contended that as the party rates were open to all wishing to buy them they were legal; that as those buying party rate tickets were not competitors of those not buying them there was no violation of Secs. 2 or 3; and that under Sec. 22 the Act did not apply to excursion tickets.

Held, (Veazey, C.), (a) that in order to produce a preference or discrimination the parties favored need not be competitors of those to whom the privilege or rate in question was denied;

(b) that party-rate tickets were not commutation tickets and were illegal under the Act;

(c) that as regards publication, posting, preferences, discriminations, etc., excursion tickets were subject to the provisions of the Act.

Order accordingly.

91-B.—Interstate Commerce Commission v. Baltimore & O. R. Co.
43 Fed. 37; 3 Int. Com. Rep. 192. (Aug., 1890.) C. C. S.
D. Oh. W. D.

Petition to enforce order issued in above requiring defendant to desist from the sale of party rate tickets.

These were posted and filed and were sold to all who applied for them on the same terms. They applied to parties of ten or more.

Held, (Jackson, J.), (a) that party rate tickets were commutation passenger tickets within the meaning of Sec. 22, (Sage, J., dissenting);

(b) that as the volume or amount of traffic was a proper consideration in fixing rates, the allowance of these rates was not an unjust discrimination or an undue preference within the meaning of Secs. 2 or 3;

(c) that when the Federal Court was "called upon, either by the Commission or others, to enforce the provisions of the Act to regulate commerce, it is indispensably necessary to show either a case of individual grievance or of public inconvenience resulting or arising from acts of the carrier done in violation of the Statute";

(d) that English decisions on portions of the English statute incorporated into our Act must be regarded as if read into the text of the latter;

(e) (semble) that mileage excursion and commutation tickets need not be published.

Petition dismissed.

91-C.—Interstate Commerce Commission v. Baltimore & O. R. Co.
145 U. S. 263; 12 S. Ct. Rep. 844. (1892.)

Appeal from foregoing.

Held, (Brown, J.), (a) that in framing the Act "it was not intended to ignore the principle that one can sell at wholesale cheaper

than at retail," although a discrimination as to freight in favor of large shippers might, if carried too far, be unjust (see p. 280, also p. 282);

(b) that party rate tickets were not commutation tickets within the meaning of Sec. 22;

(c) that the latter section was not exclusive but illustrative merely and most if not all of the exceptions there enumerated were not illegal under the body of the Act;

(d) that the allowance of party rates was not improper under Secs. 2 or 3;

(e) that the English decisions relating to the question of undue preference must be regarded as read into our Act.

Judgment affirmed.

92.—Thurber, et al. v. New York Central & H. R. R. Co., et al.
3 I. C. C. Rep. 473; 2 Int. Com. Rep. 742. (Mar. 14, 1890.)

Complaint of unreasonable rates on groceries in less-than-carloads from New York westward, as compared to carload rates, and of preference of wholesale dealers by the latter rates.

Complainants were the New York Board of Trade. Prior to the passage of the Act, rates on groceries had been per 100 pounds only, but rebates were given to large shippers. Subsequent to the Act carload rates were put in force which were considerably lower than those on less-than-carload shipments (the latter being from about 15% to about 60% higher). Complainants admitted that on coal, grain, tobacco, cotton, and similar commodities the carload was the normal unit of shipment and should have a lower rate, but contended that this was not the normal unit in case of groceries which should have uniform rates per 100 pounds since only about 15% of west-bound grocery shipments were in carload lots. The cost of transportation of less-than-carload freight was from 47% to 100% more than carload, and the earnings of the latter per car were about twice as great. In carload shipments the average load per car was three times that in less-than-carloads. There were a large number of west-bound empty cars, however. Complainants contended that the difference in rates should at least not be so great as to destroy the commercial profit on the commercial package used by jobbers shipping in less-than-carloads. If the cost of service and profit to the railroads were the only considerations in fixing the rates in question they were clearly reasonable.

Held, (Schoonmaker, C.), (a) that in fixing rates a railroad should not consider only its own interest, but also recognize the business interests of its patrons;

(b) that the German system of allowing a reduced rate on 10,000 pounds or 20,000 pounds of mixed freight between two given points, whether from one or more consignors to one or more consignees, was one which defendants might well adopt, although the Commission

would not sanction a lower rate based on large annual shipments by particular shippers;

(c) that in general carload rates lower than those on shipments in less than carloads were proper;

(d) that the rates here shown on shipments of full carloads of mixed articles to one destination from one or more consignors to one or more consignees were unreasonably higher than rates on regular carload shipments;

(e) that on shipments of less-than-carloads to different destinations the rates were not unreasonable;

(f) that railroads were bound to recognize existing business conditions and within reasonable limits, rates should be made to correspond therewith, and in the present case defendants should recognize that the public was more largely interested in small and miscellaneous shipments of mixed groceries than in solid carloads of one particular kind of grocery.

Ordered that within thirty days defendants readjust their tariffs in accordance with the above opinion.

93.—**Little Rock & M. R. Co. v. St. Louis, I. M. & S. Ry. Co., et al.**
41 Fed. 559; 2 Int. Com. Rep. 763. (March 20, 1890.) C.
C. E. D. Ark.

Bill by carrier for mandatory injunction to compel defendants to allow to complainant equal facilities allowed other carriers. See also (135.)

Complainant's road ran from Memphis, Tenn., to Little Rock, Ark. At Memphis it connected with the line of the East Tenn., Va. & Ga. R. Co. to eastern points, and at Little Rock with the line of the defendant, the St. Louis, I. M. & S. Ry. Co., to points south and west. The latter company had recently built a branch line from Memphis to Bald Knob, a point on its main line 57 miles west of Little Rock. The other defendant railroad, the Hot Springs R. Co. ran from Malvern, a point on the St. Louis, I. M. & S. R. Co.'s. main line west of Bald Knob, to Hot Springs, Ark. The St. Louis, I. M. & S. R. Co. refused to receive through freight or honor through passenger tickets issued by the Hot Springs R. Co. to points east of Memphis via the line of the complainant, whereupon the Hot Springs R. Co. refused to sell through tickets or to check baggage by this route. The Bald Knob branch of the St. Louis I. M. S. R. Co. was 15 miles longer than the route via complainant's line and its connecting facilities at Memphis were also inferior to complainant's.

Held, (Caldwell, J.), (a) that neither the common law nor the Act invested the Commission or the Courts with power to compel railroads to enter into through routing or through rate contracts;

(b) that it was unreasonable to require defendant, the St. Louis I. M. & S. R. Co., to give up a portion of its own traffic for the benefit of the complainant.

Motion denied. Demurrer to bill subsequently filed and sustained.

94.—Sidman v. Richmond & D. R. Co. 3 I. C. C. Rep. 512; 2 Int. Com. Rep. 766. (April 5, 1890.)

Complaint of unreasonable charge to commuter forgetting his ticket and of defendant's refusal to refund fares paid by him on the train on subsequent presentation of his commutation ticket.

The complainant bought a commutation ticket on June 13, 1889, good until August 31, and not redeemable. Until May 25, the Railroad Company had been accustomed to allow commuters who forgot their tickets to take the conductor's receipt for the fare paid (25c. above single trip rate), and have it refunded later, on getting their tickets punched. On May 25, the Railroad Company stopped this practice, and posted a notice to that effect. Complainant forgot his ticket, and had to pay 25 cents in addition to the full fare each way. The company refused to refund.

Held, (Veazey, C.), (a) that complainant had nothing to complain of, since he bought his ticket after the refunding custom had been stopped, and the Railroad Company, in refusing to refund, was doing only what was provided for in the contract and notice;

(b) that it was proper for the company to charge extra for passengers without tickets, and 25 cents was not an excessive charge.

Complaint dismissed.

95.—Alford v. Chicago, R. I. & P. R. Co. 3 I. C. C. Rep. 519; 2 Int. Com. Rep. 582, 771. (April 9, 1890.)

Complaint of preference of Kansas City over Lawrence, Kas., by refusal to stop trains at Lawrence.

Defendant operated a railroad from Kansas City to Topeka via St. Joseph. The Union Pacific had a direct line from Kansas City to Topeka, passing through Lawrence, Kas. By a trackage agreement, defendant was allowed to run through trains over the more direct line of the Union Pacific, on the express condition that defendant should do "no local business." The agreement was not a lease. Complainant, a citizen of Lawrence, claimed that defendant's trains must stop at Lawrence, otherwise defendant gave a preference over Lawrence to Kansas City. It did not appear that the local service of the Union Pacific was inadequate.

Held, (By the Commission), (a) that the contract was a valid one and the powers of the defendant over the line of the Union Pacific were only such as given by it and not those of a common carrier;

(b) that the Act did not create in a road new powers and rights but simply regulated the exercise of those which already existed;

(c) that the duties of the defendant under the Act were bounded by its powers and there was no unjust discrimination in refusing a service which it had no statutory or contract right to perform;

(d) that the Union Pacific was under no obligation to grant to the defendant further rights;

(e) (semble) that the Union Pacific could not, by lease of its road,

or otherwise, release itself from its obligation to the public, but in this case its local service appeared to be adequate.

Cooley, Ch., concurred but did not pass on the validity of the contract, holding that in so much as this was not attacked, the Commission had no power to require the defendant to stop its trains at Lawrence in violation of the contract.

Complaint dismissed.

96.—New Orleans Cotton Exchange v. Illinois Cent. R. Co., et al.
3 I. C. C. Rep. 534; 2 Int. Com. Rep. 460, 777. (April 11, 1890.)

Complaint of unreasonable cotton rates from points in Northern Mississippi and Tennessee to New Orleans as compared with rates north and east, to Atlantic ports and markets; of unreasonable rates on uncompressed cotton compared to those on compressed; and of defendants' refusal to haul uncompressed cotton on flat cars.

The grades over roads to the north and east were easier than to New Orleans, and coal was also more accessible, the traffic greater, the hauls much longer and there were more empty cars. The proportional rate for the same distance on the long northern haul as that to New Orleans, was much less than the New Orleans rate. There was also rail and water competition from southern points. There was greater risk to the carrier when the cotton was hauled on flat cars than when box cars were used. Compressed cotton was easier to handle than uncompressed cotton and compression was practically a necessity for a long haul.

Held, (Bragg, C.), (a) that rates in one part of the country were of but little assistance in determining the reasonableness of rates in another part;

(b) that the proportion of a long through haul applicable to a given distance was not a proper test of the reasonableness of a local rate for the same distance;

(c) that in view of the water competition, etc., the rates to New Orleans and to the north and east, (with certain exceptions, p. 572-4), were relatively reasonable;

(d) that defendants were not bound to use flat cars at greater risk to themselves and at the same rate as when box cars were used;

(e) that the difference between rates on compressed and uncompressed cotton should be the cost of compression.

Order accordingly.

97.—Worcester Excursion Car Co. v. Pennsylvania R. Co. 3 I. C. C. Rep. 577; 1 Int. Com. Rep. 811; 2 Id. 12, 792. (April 23, 1890.)

Complaint of defendant's refusal to receive or haul complainant's cars over its line.

The complainant company made cars adapted to touring and pleasure parties. Defendant refused to receive these cars or to haul them

upon its railroad for the following reasons: (1) Defendant had contracted to haul only Pullman cars. (2) Complainant's cars differed from other and ordinary cars, and defendant had not facilities to repair them in case of accident. (3) The cars offered by complainant to defendant were in fact out of repair.

Held, (Bragg, C.), (a) that the tracks of a railroad were not a common highway on which everyone was entitled to place cars, but were the property of the company, which might use and operate the road as it pleased, in conformity, however, with the law;

(b) that the Commission could not control the company in the physical operation of its road, and the company might get its cars from whom it pleased, it being for the public interest that a railroad company be allowed entire freedom in acquiring its whole equipment, so that it might be absolutely responsible for the character and the quality thereof.

Complaint dismissed.

98.—**Mattingly v. Pennsylvania Co.** 3 I. C. C. Rep. 592; 2 Int. Com. Rep. 575, 806. (Apr. 25, 1890.)

Complaint of defendants refusal to send cars via a certain route at through rates.

Complainant owned a distillery near Louisville, Ky., and 1½ miles of track connecting with the tracks of the Kentucky Bridge Co. Defendant controlled the J. M. & I. road which was the only road connecting the tracks of the Kentucky Bridge Co. with those of certain other roads on the Indiana side of the bridge. Defendant refused to switch cars destined to complainant's distillery from these roads to the tracks of the Kentucky Bridge Co., and based such a refusal on these grounds:

(1) that the haul was wholly intrastate;

(2) that the J. M. & L. had a line of its own over the Louisville Bridge (See also Ky. & Ind. Bridge Co. v. L. & N. R. Co.), (57-A), and no through route via the Kentucky Bridge;

(3) that the Commission had no power under the Act to require defendant to give the use of its tracks and terminal facilities to a rival road.

Held, (Schoonmaker, C.), (a) that the traffic in question, although wholly within one state, was interstate traffic since it was a part of a through journey to another state;

(b) that while it was the duty of a railroad to forward all traffic offered it by a connecting carrier, it was at liberty to choose its own route;

(c) that the Act did not give the Commission power to order a carrier to agree to a through route at through rates, which was virtually what was asked for here.

Complaint dismissed.

100-A.—Stone & Carten v. Detroit, G. H. & M. R. Co. 3 I. C. C. Rep. 613; 2 Int. Com. Rep. 152, 185; 3 id. 60. (April 26, 1890.)

Complaint of violations of Secs. 2, 3 and 4 by equal rates from eastern points to Ionia, Mich., and to Grand Rapids, Mich., the latter rate being for a greater distance by the same line and including free cartage for 1½ miles from defendant's station to the business centre.

For 25 years prior to the filing of this complaint defendant had allowed free cartage to the business centre at Grand Rapids, but not at Ionia, 33 miles east of Grand Rapids, where the business centre was but one-half mile distant from the station. Cartage cost about 2c. per 100 pounds at either place. Rates to Ionia and Grand Rapids were the same. Shortly before the filing of this complaint two other roads had been built to Grand Rapids both entering the business centre of the town. There was evidence that this complaint had been instigated by them. There was little business competition between Ionia and Grand Rapids.

Held, (Cooley, Ch.), (a) that cartage was not here a terminal expense and the free allowance thereof was a rebate;

(b) that the resultant rate 2c. less than that to Ionia, was in violation of Sec. 4;

(c) that it was immaterial that the practice had long been acquiesced in or that Ionia and Grand Rapids were not active competitors.

Morrison and Schoonmaker, CC., concurring held also that the free cartage at Grand Rapids was an illegal device for receiving less than the tariff rate.

Order that defendant cease from allowing free cartage at Grand Rapids.

Veazey, C., did not sit, and took no part in this decision.

Bragg, C., dissented on the ground that this was really a complaint by the competing railroads and not by the nominal complainants, that the cartage was a mere item in the cost of transportation, made proper by the exceptional conditions at Grand Rapids and that this was not an "illegal device."

100-B.—Interstate Commerce Commission v. Detroit, G. H. & M. Ry. Co. 57 Fed. 1005; 4 Int. Com. Rep. 722. C. C. W. D. Mich. S. D. (Oct. 6, 1893.)

Petition to enforce order issued in above, requiring defendant to desist from allowing free cartage at Grand Rapids, Mich.

Complainants were residents of Ionia, 33 miles east of Grand Rapids. The same rate was charged from the east to both points, but, by reason of competing roads running to the business centre of Grand Rapids, defendant furnished free cartage from its station 1½ miles to such business centre, but did not furnish it at Ionia. This cost 2c. per 100 pounds. Complainants had no real interest, the expense of suit being paid by the competing roads.

Held, (Taft, J.), (a) that complainants' lack of real interest in the proceeding was immaterial;

(b) that the charge of the same rate to Ionia and Grand Rapids was a conclusive admission that the circumstances and conditions of the hauls to these points were the same;

(c) that the allowance of 2c. worth of service which was not transportation proper, was equivalent to a reduction of 2c. from the rate to Grand Rapids and produced a violation of Sec. 4;

(d) that this was not justified by competition, or by the fact that Grand Rapids was a much larger place.

(e) (semble) that the wholesale principle was applicable to freight rates and might justify lower rates to larger shippers; (p. 1011.)

Order that defendant desist from the allowance of free cartage at Grand Rapids unless an equivalent service or reduction in rates be made at Ionia.

Severens, J., dissented.

100-C.—Detroit, G. H. & M. R. Co. v. Interstate Commerce Commission. 74 Fed. 803; 43 U. S. App. 308; 21 C. C. A. Rep. 103; C. C. A. 6th Circuit. (Apr. 14, 1906.)

Appeal from foregoing.

Held, (Hammond, J.), (after showing that transportation between stations and accessorial services such as cartage were properly kept separate and distinct, and that this case involved a question of the necessity of equality of facilities at different localities), (a) that the Act did not require equal delivery facilities at all localities;

(b) that the imposition of equal charges at Ionia and Grand Rapids did not establish any presumption that the conditions of transportation to the stations at the two points were the same;

(c) that Section 4 referred to the aggregate rate including the accessorial service and that Section was hence not violated here, though the items making up the aggregate charge were not the same in each case;

(d) that the fact that this service had been established by long custom was of great weight in deciding whether the Commission had power to do away with it;

(e) that the proper method of preventing discrimination was to order the carrier to allow equal facilities at both points, and the Commission had no power arbitrarily to order the carrier to discontinue cartage at Grand Rapids;

(f) that the Courts could merely enforce lawful orders of the Commission and had no power to modify them as the Court below did here;

(g) that the defendant's station being away from the business centre of Grand Rapids was a circumstance justifying a lower rate at that point;

(h) (semble) that competition of roads subject to the Act was a condition justifying a preference;

(i) (semble) that defendant was bound to post and file its cartage charge separate from the station to station charge;

(j) that a shipper doing his own carting was entitled to a credit for the amount of the cartage charge.

Decree reversed and cause remanded with directions to dismiss the petition.

100-D.—Interstate Commerce Commission v. Detroit, G. H. & M. Ry. Co. 167 U. S. 633; 17 S. N. Rep. 986. Appeal from C. C. A. 6th Circuit. (May 24, 1897.)

Appellants relied only on Secs. 4 and 6.

Held, (Shiras, J.), (a) that Sec. 4 had in view only the transportation of persons and property by rail and all obligations under that section were fulfilled when the passengers and property were discharged from the cars at the company's warehouse or station;

(b) that in view of the fact that the allowance of free cartage had been open and notorious for 25 years the failure to state it in the printed tariffs was unimportant;

(c) that although free cartage might well be held not to be included in the phrase "terminal charges," and not to be a rule or regulation changing, affecting or determining rates, yet it was within the Commission's powers to direct the publication of charges therefor;

(d) (semble) that the facts in question might, as regards Ionia shippers, constitute a violation of Sec. 2 or 3.

Judgment affirmed.

101.—Elvey v. Illinois Central R. Co. 3 I. C. C. Rep. 652; 2 Int. Com. Rep. 804. (May 9, 1890.)

Complaint of unreasonable charge for household goods from Louisiana to Chicago.

In December, 1888, complainant had shipped a carload of household goods from Chicago to Louisiana at the special \$60 per car emigrant rate published in the tariffs. In May, 1889 he shipped back the same goods less two ponies, and was charged the regular tariff rate of \$122, the emigrant rate not applying to the return trip. The service was substantially the same in both directions. The defendant submitted the tariff to the Commission for its judgment and advice as to whether it was proper.

Held, (Bragg, C.), (a) that \$122 was a reasonable rate and therefore the complainant's demand should be denied;

(b) that the special emigrant tariff rate of \$60 was unlawful as discriminating against shippers other than emigrants;

(c) (semble) that an emigrant passenger rate might be proper.

Complaint dismissed and ordered that tariffs be amended by striking out the special emigrant rate.

102.—Pankey v. Richmond & Danville R. Co., et al. 3 I. C. C. Rep. 658; 3 Int. Com. Rep. 33. (May 9, 1890.)

Complaint of unreasonable rate on shipment of books resulting from failure by defendants' agents to follow routing directions.

Complainant had shipped 5 boxes of books from Troupe, Tex., to Fort Lawn, S. C., giving directions to the agent as to route. The agent did not designate the route fully on the way bill, so that the books went by a route over which the published rates were 86c. greater than over the route specified by complainant.

Held, (Bragg, C.), (a) that where a shipper gave routing directions it was the agent's duty to send the freight by the route designated, and in the absence of routing directions, to route by the way best and cheapest to the shipper, making the proper notations on the way-bill to insure such routing;

(b) that the neglect of such duty resulted, in this case, in an overcharge, which should be refunded.

103.—Lehmann, Higginson & Co. v. Southern Pac. R. Co., et al. 4 I. C. C. Rep. 1; 2 Int. Com. Rep. 548; 3 Int. Com. Rep. 80. (May 22, 1890.)

Complaint of unreasonable sugar rate from San Francisco to Humboldt, Kas., as compared to that to Kansas City.

Humboldt was 118 miles south and slightly west of Kansas City. It was not on the through line to Kansas City from San Francisco, but on a branch, but was nearer to San Francisco by rail than Kansas City. The sugar rate to Kansas City was 65c. per 100 pounds, and that to Humboldt 85c., the latter being made by adding to the Kansas City rate the local from Kansas City and Humboldt, this being a lower combination than by way of any of the nearer junction points, the roads from which to Humboldt were separate lines making distinct charges and not parties to through rates from San Francisco. Defendants alleged that if the 65c. rate to Kansas City were raised, sugar would come from Hawaii via New York instead of via San Francisco. Many cars went empty from San Francisco to Kansas City where they got west-bound loads and cars carrying sugar to Humboldt went to Kansas City empty for west-bound loads from there. The method of combining rates to smaller towns on Kansas City was followed for some distance west of Humboldt, the rate from San Francisco in some cases being \$1.00 and \$1.10.

Held, (Schoonmaker, C.), (a) that Humboldt was on a branch line and there existed no through route or rate from San Francisco thereto on sugar, and the Commission had no power to order the defendants to put such a route and rate in force;

(b) that rates so low as to net a loss to the railroad, below the cost of service, were unjustified, but such was not the case here, as the Kansas City rate yielded some profit to the roads;

(c) that actual water competition of controlling force and relating to traffic important in amount had here been shown;

(d) that although a rate made by combining a through and local rate was anomalous and usually unreasonable, yet it might be proper, where, as here, the local rate was reasonable;

(e) that if distance were the only consideration there would here be an unjust discrimination in favor of Kansas City, but that in view of the fact that Humboldt was on a branch line, and of the other considerations mentioned above, the rate relation was not unreasonable;

(f) that sugar to Humboldt at the combination rate on Kansas City need not in fact pass through Kansas City.

Complaint dismissed.

Morrison, C., concurred in the result on the ground that Humboldt was on a branch line.

104.—Warner v. New York, C. & H. R. R. Co., et al. 4 I. C. C. Rep. 32; 3 Int. Com. Rep. 74. (May 21, 1890.)

Complaint of unreasonable rate and classification of a patent medicine manufactured by complainant.

Complainant was a patent medicine manufacturer at Rochester, N. Y. His medicines were classified as first class in less-than-carloads, and second class in carloads, but the carload rate was subsequently reduced to third class. The market value of the medicines was about three times that of ale, beer and mineral waters, which were rated fifth class C. L., and third class L. C. L. Complainant alleged that such difference in market value was due to expenses of advertising, and that the real intrinsic value was about the same in both instances. There was no practical difference in the cost of handling the two. The quantity of beer, etc., shipped appeared to be very much greater than that of medicine; and beer bottles were returned, but at a low rate.

Held, (Schoonmaker, C.), (a) that the railroad was entitled to classify on the basis of market value;

(b) that the difference above mentioned in market value justified the existing classification, though the former second class rate in carloads was too high;

(c) that the amount of traffic was a proper element for consideration.

Order accordingly.

105.—Andrews Soap Co. v. Pittsburgh, C. & St. L. Ry. Co., et al. 4 I. C. C. Rep. 41; 2 Int. Com. Rep. 625; 3 Int. Com. Rep. 77. (May 31, 1890.)

Complaint of unreasonable classification of soap.

Complainant sold castile soap, calling it toilet soap, and built up a large trade for it as such. It was really no better than many common laundry soaps. Toilet soap was rated 2nd class and laundry soap 4th class, and complainant claimed that his soap should be classified as 4th class, since it was not really toilet soap.

Held, (Schoonmaker, C.), (a) that the carrier was justified in accepting the designation given goods by the shipper and in classifying them accordingly;

(b) that hardship in the particular case was no reason for breaking the general rule, the shipper's remedy being in his own hands, by making a proper designation.

Complaint not sustained.

106.—Re Food Products Excessive Rates. 4 I. C. C. Rep. 48; 3 Int. Com. Rep. 93, 111, 151. (1890.)

Investigation of above rates in pursuance of Senate Resolution.

In an opinion by Morrison, C., the situation was discussed. It was alleged that farmers could not realize the cost of production by reason of unreasonable rates. It was found that this was partly on account of the excessive production and partly on account of unreasonable rates. The Commission stated that although transportation charges should, where possible, have a reasonable relation to the market price of the commodity transported and the value of the service rendered, a railroad was not bound to carry to distant points, at a loss to itself, articles which did not command a high enough market price to pay a reasonable freight rate, and still yield a profit to the producer. Instances of unreasonable rates were enumerated (p. 69-71.)

See also same case, 4 I. C. C. Rep. 116, in which the situation was further reviewed and the general powers and duties of the Commission discussed.

107.—Manufacturers Union of Mankato v. Minn. & St. L. R. Co., et al. 4 I. C. C. Rep. 79; 2 Int. Com. Rep. 228, 302; 3 Int. Com. Rep. 115. (June 14, 1890.)

Complaint of unreasonable rates from Mankato, Minn., to Chicago.

Defendant ran from Minneapolis to Chicago via Waterville, the latter being 65 miles out of Minneapolis. From Waterville a branch ran to Mankato, a distance of 37 miles, so that Mankato was 28 miles nearer Chicago than Minneapolis. Rates from Minneapolis and Waterville were the same, being very low by reason of competition at Minneapolis with a shorter line and of the observance of Sec. 4. The rate from Mankato had been 20% higher than the Waterville rate, but had recently been reduced to 10% above it.

Held, (Schoonmaker, C.), (a) that although as a general rule rates per ton mile should decrease as distance increased, this was not an invariable rule and higher rates over a branch line were proper and reasonable;

(b) that rates 20% above those from Minneapolis and Waterville were unreasonable, but those 10% above were reasonable.

Complaint dismissed.

108.—United States v. Michigan Central R. Co., et al. 43 Fed. 26; 3 Int. Com. Rep. 287. D. C. N. D. Ill. (June 23, 1890.)

Indictment against a railroad, its assistant general freight agent, and several inferior railroad employees for giving less than published rates.

The Michigan Cent. R. Co. had published a rate on grain of 20c. per 100 pounds from Chicago to New York. It participated with lines running from points north, south and west of Chicago in a through rate of 22c. from certain points via Chicago to New York, of which it received 18.2c. for its haul from Chicago to New York. It allowed this latter rate to Counselman & Co., on purely local shipments, using fictitious expense bills as if the grain had come to Chicago by connecting lines. Defendant Street clearly knew of and was responsible for the practice. The evidence against his subordinates would perhaps point to their knowledge that something unusual was being done but did not clearly show their guilty knowledge.

Held, (Blodgett, J.), (a) that a railroad corporation was not subject to indictment under the Act and as to it the indictment should be quashed;

(b) that defendant Street should be found guilty;

(c) that although it was no defense to an indictment under the Act that defendant was a mere subordinate, nevertheless, in such case very strict and clear proof of guilty knowledge and participation in the illegal acts must be shown and this did not appear in this case with reference to the subordinate indicted;

(d) that the law was intended to punish only an active and wilful violation of its provisions.

Order accordingly.

109.—*Proctor & Gamble v. Cincinnati, H. & D. R. Co., et al.* 4 I. C. C. Rep. 87; 2 Int. Com. Rep. 614; 3 Int. Com. Rep. 131. (July 17, 1890.)

Complaint of unreasonable rate and classification on soap in Official Classification Territory.

Complainants were soap manufacturers near Cincinnati, Ohio. For a number of years prior to 1889, soap had been rated fifth class, but only the net weight was charged for, the boxes being hauled free. The difference in charge between gross and net weights amounted to the same as that between fifth and sixth class, so that under the net weight rule soap was taken practically sixth class. In 1889 the roads began to charge for gross weight on soap. Articles in fifth class were all more valuable and yielded more profit to the grocer than soap. It could be loaded heavily in a car, was not liable to damage, and did not spoil or absorb odors. It was less valuable per pound than the materials from which it was made (being 30% water), and these materials were rated fifth class. Soap was very desirable freight, there being no article in sixth class more desirable.

Held, (Veazey, C.), (a) that by giving soap what amounted to sixth class rates for so long a period defendants admitted that such rates were reasonable;

(b) that they should desist from charging more than they formerly did under the net weight practice.

Order accordingly.

Rehearing denied, 4 I. C. C. Rep. 443.

110-A.—San Bernardino Board of Trade v. Atchison, T. & S. F. R. Co., et al. 4 I. C. C. Rep. 104; 2 Int. Com. Rep. 522; 3 Int. Com. Rep. 138. (July 19, 1890.)

Complaint of unlawful preference by defendant in favor of Los Angeles, Cal., over San Bernardino, Cal., a less distant point on the same line, and of violation of Sec. 4.

The charge to San Bernardino was greater than that to Los Angeles. There appeared to be no real water competition at Los Angeles. The complaint did not allege similar circumstances, and the tariffs had been long on file with the Commission without protest.

Held, (Morrison, C.), (a) that there being no real water competition, the possibility of such competition was not sufficient to justify the greater charge to San Bernardino;

(b) that it was immaterial that similar circumstances were not alleged;

(c) that it was immaterial that the tariffs had long been on file without protest, they being unreasonable;

(d) that defendant having failed to show dissimilar circumstances justifying the greater charge for the shorter distance, such charge must be discontinued.

Order accordingly.

110-B.—Interstate Commerce Commission v. Atchison, T. & S. F. R. Co., et al. 50 Fed. 295; 3 Int. Com. Rep. 571. C. C. S. D. Cal. (Apr. 25, 1892.)

Petition to enforce order issued in above, requiring defendant to desist from charging higher rates from inland points to San Bernardino than to Los Angeles, a more distant point.

Los Angeles was a terminal point where there was strong competition by rail and water from the east. The evidence taken before the Court showed that the competition at Los Angeles was much stronger than at the time of the hearing before the Commission.

Held, (Ross, D. J.), (a) that Sec. 4 was wholly inapplicable to cases in which the circumstances and conditions were substantially dissimilar;

(b) that in the latter cases no order of the Commission was necessary to make a greater charge for the shorter distance legal;

(c) that competition, especially that by water, was a circumstance creating dissimilarity of conditions;

(d) that the Court was not bound by the findings of the Commission these being merely *prima facie* evidence.

Petition dismissed.

- 111.—**Rice, Robinson & Witherop v. Western N. Y. & P. R. Co.** 4 I. C. C. Rep. 131; 2 Int. Com. Rep. 298, 496; 3 Int. Com. Rep. 162. (Sept. 5, 1890.)

Complaint of unreasonable rates on oil in barrels from Titusville, Pa., to Buffalo, N. Y., and of preference of shippers in tank cars.

After the decision in the case between the same parties, (2 I. C. C. Rep. 389), (67), holding the rate of 34c. per barrel (8½c. per 100 pounds) to be reasonable as compared with the former 25c. rate and with the 12c. division of the through seaboard rate, defendant seized on certain dicta in *Rice v. L. & N. R. Co.*, (42), and in *Seo-field v. L. S. & M. S. R. Co.*, (51), as authorizing a charge for the weight of the barrel in barrel shipments by roads which had theretofore charged only for the net weight of the oil. This made a difference of two tons in a carload. There were no return loads for tank cars from Buffalo to Titusville and barrels were returned at 10c. per 100 pounds, while nothing was charged for tank cars. The Standard Oil Co. had wells at Glade Run from which it sent crude oil to Buffalo by a branch of defendant's road parallel to and of the same length as the line from Titusville, at about half the rate charged from Titusville on refined oil. This branch was less expensive to operate than that from Titusville. There was a 42 gallon allowance in freight to tank shippers for leakage, although they received from the consignee the price of the whole load without any allowance.

Held, (Schoonmaker, C.), (a) that under the conditions here apparent either there should be a charge both for the tank and the barrel or no charge for either;

(b) that where one road owned two parallel branches the fact that one was more expensive to operate than the other did not justify the road in treating each as an independent property and adapting the rates on each branch to suit the respective conditions, thereby excluding shippers on the more expensive branch from the common market, but that the interests of the public should also be considered, and this was especially true where the two branches would compete, if under different management, thus equalizing rates from each;

(c) that where a road did not own sufficient of a certain kind of equipment to supply all shippers therewith, it should see to it that those not supplied were put to no disadvantage thereby;

(d) that the fact that the Commission had sanctioned the charge for the weight of the barrel in the two former cases did not embarrass it in the present decision;

(e) that the 42 gallon allowance rule was clearly an illegal device to favor tank shippers, and should be discontinued.

Order accordingly.

- 112.—**Chicago Board of Trade & Commerce v. Chicago & Alton R. Co., et al.** 4 I. C. C. Rep. 158; 2 Int. Com. Rep. 410. 505; 3 Int. Com. Rep. 233, 284. (Oct. 16, 1890.)

Complaint of preference of western packers over those at Chicago by greater charge to Chicago on live hogs than on products thereof.

From packing points on the Missouri River and vicinity the rate per 100 pounds east on live hogs was the same as that on products, but to Chicago it was 25% to 90% greater and had so remained for a considerable time, resulting in a gain to the western packing business and a falling off of that at Chicago. Trains carrying live hogs travelled somewhat faster than those carrying products and required attendants who travelled free, but the carriage of live hogs entailed no greater risk on the carrier and required no ice. Live hogs were worth only about half as much per 100 pounds as the product, and live hogs yielded more revenue to the roads for the service if carried in double deck cars. The defendants had not sufficient of such cars and wished to encourage the western packers as this resulted in much incidental freight. The live hogs had already paid a high local rate from the ranches to the western packing points which, combined with the product rate to Chicago, about equalled the live hog rate from the ranch to Chicago.

Held, (Bragg, C.), (a) that *prima facie* the rate on raw materials should be less than on products thereof;

(b) that under the circumstances the live hog traffic paid the railroads more for the service;

(c) that the carriers could not set up their lack of double deck cars as a justification for a preference to western packers;

(d) nor their desire to build up the western packing business;

(e) nor the fact that large investments of capital had been made by western packers relying on the advantage in rates theretofore allowed them;

(f) nor the fact that the hogs had already paid a local rate to western packing point.

Order accordingly, (Cooley, Ch., absent.)

113.—Poughkeepsie Iron Co. v. New York Central & H. R. R. Co., et al. 4 I. C. C. Rep. 195; 3 Int. Com. Rep. 248. (Oct. 20, 1890.)

Complaint of rate on pig iron from Poughkeepsie, N. Y., to Boston, as higher than the proportion of the through rate from western points.

The proportion of the through rate through Poughkeepsie from Youngstown and Cleveland, Ohio, was less than the straight rate from Poughkeepsie, but not less than was usual in hauls of these respective lengths. Complainant had to pay considerably more for coal than the southern and western iron manufacturers and so, in spite of the higher total rate which the latter had to pay to Boston, they could undersell complainant there.

Held, (Bragg, C.), (a) that a local rate need not be as low as the proportion of a through rate since the per ton mile rate properly decreased as the distance increased;

(b) (semble) that the Commission had no power to order a rate increased.

Complaint dismissed.

114.—**Harvard Co. v. Penna. Co., et al.** 4 I. C. C. Rep. 212; 2 Int. Com. Rep. 625; 3 Int. Com. Rep. 257. (Oct. 23, 1890.)

Complaint of unreasonable rate and classification of surgical chairs from Canton, Ohio.

Complainant's chairs were classed double 1st class in less than carloads, and 2nd class in carloads, but there were no carload shipments. They were shipped singly, crated, partly knocked down and took the same rate as dental chairs which were bulkier and not so heavy. As much weight of surgical chairs could be placed in a car as of pianos or of a number of other articles taking 1st class rates, but surgical chairs were less valuable than pianos and dental chairs, and there was less traffic in them.

Held, (Bragg, C.), (a) that a difference in rates between carload and less than carload freight was proper as was a difference of per ton mile rate based on distance, a proportionately lower rate being proper for carload freight and for long hauls;

(b) that in classifying freight consideration should be given to space occupied, value of goods, specific gravity, convenience in loading, etc.;

(c) that although greater volume of traffic in general should result in lower rates, yet as between different kinds of less than carload freight, the volume of traffic of specific articles should not affect the rate, and no greater charge should be made on an article seldom shipped than on a similar one often shipped;

(d) that a railroad could not expect to receive equally remunerative rates on all business;

(e) that the chairs in question should be changed from double 1st to 1st class.

Order accordingly.

115.—**Rice v. Atchison, T. & S. F. R. Co., et al.** 4 I. C. C. Rep. 228; 2 Int. Com. Rep. 573, 799; 3 Int. Com. Rep. 263. (Oct. 27, 1890.)

Complaint of rates on oil from Marietta, Ohio, to points between Omaha, Neb., and the Pacific Coast as higher than the rates to the Pacific and hence in violation of Sec. 4.

There was a 90c. blanket rate on oil to the Pacific Coast from all points between Omaha and New York. Rates from Marietta, Ohio, where complainant had refineries, to intermediate points between Omaha and the Pacific were made by allowing the lowest combination of the through rate to Omaha or a Pacific terminal point plus the local rate to destination, but rates to certain intermediate points were not published. Oil was also taken from the wells in Pennsylvania and Ohio to the Atlantic by pipe-line and by tank steamers to the Pacific there being strong competition with the railroads in

this way. There was also evidence of water competition from the southern points, but this was not satisfactory.

Held, (Bragg, C.), (a) that competition by water was here proved which was actual and related to traffic important in amount and the higher rates to intermediate points were, therefore, justified;

(b) that the combination rate to intermediate points should be published;

(c) that as to southern points the case was held open and as to others, complaint dismissed;

(d) (seem) that a proceeding strictly *inter partes* would be considered and decided by the Commission only on the grounds presented and argued by their counsel.

116.—King & Co. v. New York, N. H. & H. R. Co., et al. 4 I. C. C. Rep. 251; 2 Int. Com. Rep. 624; 3 Int. Com. Rep. 272. (Oct. 30, 1890.)

Complaint of unreasonable flour rates to Readville, Mass., from New York in comparison with those to Boston, of preference of Boston and violation of Sec. 4.

Readville was on defendant's line to Boston, 8 miles south of Boston. The through flour rate to Boston was 9c. by rail and 8½c. to 9c. by water, but no through rail rates were allowed to intermediate points so that the rate to Readville was a combination of the 9c. rate by the N. Y., N. H. & H. R. Co. from New York to Willimantic, and the 9c. rate by the N. Y. & N. E. from Willimantic to Readville, a total of 18c. As a matter of fact it would have been possible for complainants to have shipped by water and rail to Readville for 9c., but they did not know of this at the time. The through business to Boston was done by fast trains making no stops and having the right of way over local trains which made many stops.

Held, (Bragg, C.), (a) that competition by water at Boston justified an exception to Sec. 4;

(b) that there was no through rate and route to Readville and the Commission had no power to order one;

(c) that in view of the greater expense connected with the local service the rates in question were not unreasonable.

Complaint dismissed without prejudice.

117.—Capehart, et al. v. Louisville & N. R. Co., et al. 4 I. C. C. Rep. 265; 3 Int. Com. Rep. 278. (Nov. 3, 1890.)

Complaint by Steamboat Co. of defendants' refusal to make with it the same through rates and through routing arrangements which they made with another similar company.

Defendants' roads ran from Tennessee points to the Tennessee River where steamers took up the freight. They made through rates with a rival steamboat line whereby the railroads received one-third less than their regular rate, but refused to make a similar arrangement with complainants.

Held, (Bragg, C.), (a) that a carrier had the right to choose its own partners and the Commission had no power to order through routes and rates or to award damages for the refusal by a railroad to grant them;

(b) that the second paragraph of Sec. 3 applied only to carriers subject to the Act and not to water-lines.

Complaint dismissed without prejudice.

118.—McMillan & Co. v. Western Classification Committee. 4 I. C. C. Rep. 276; 3 Int. Com. Rep. 282. (Nov. 7, 1890.)

Informal complaint of unreasonably high classification of hides over roads represented in defendant committee.

Complainant was a dealer in hides in Minneapolis and alleged that the Committee classed hides higher than other railroads and higher than was reasonable. The Commission got the parties together but they would not agree. The roads were not bound to accept the classification fixed by the defendant Committee unless they saw fit.

Held, (Bragg, C.), (a) that the Commission had no power to grant the desired relief by an order directed against this defendant;

(b) that if the complainant desired further relief he should bring a formal complaint joining all necessary parties;

(c) that although the Commission had power to make an investigation of the rates in question under Sec. 12 the facts did not warrant it.

120.—Haddock v. Delaware, L. & W. R. Co. 4 I. C. C. Rep. 296; 3 Int. Com. Rep. 123, 302, 410, 456, 568, 722. (Nov. 30, 1890.)

Complaint of unreasonable rates on coal and of discrimination in favor of coal owned by defendant company. Motion to dismiss complaint.

Complainant owned mines and shipped coal from Luzerne County, Pa., to New York and Buffalo. Prior to 1887 he had made a contract with defendant whereby the latter agreed to haul coal to New York for him for one-half of what defendant's own coal sold for at New York, and to Buffalo at the same terms for which it carried it for others. Defendant also owned mines (having been chartered prior to the Pennsylvania Constitution of 1874) and about five-sixths of all coal carried by it was its own. Complainant did not contend that the Act invalidated his contract with defendant, but alleged that the rates charged to New York and Buffalo were *per se* unreasonable. Complainant also asked that defendant be required to produce its books, papers and contracts in order that he might show the unreasonableness of the rates in question.

Held, (Cooley, Ch.), (a) that without passing on the validity of the contracts in question, where by contract parties had fixed their rates with a railroad the Commission had no jurisdiction to alter such rates;

(b) that where a railroad was a shipper over its own line, alleged discrimination in favor of itself was a most difficult question to deal with for although such discrimination was the worst form and clearly within the mischiefs which the Act was intended to remedy, yet it was very difficult to prove;

(c) that the Commission had no power to require defendant to keep an account of the expense of hauling its own coal;

(d) that notwithstanding the defendant's agreement to charge complainant the same rates charged others on shipments to Buffalo, the commission had jurisdiction to inquire whether such rates were reasonable;

(e) that the purpose for which complainant asked for the production of contracts and records of business dealings with third parties could be as well answered by calling witnesses and that such being the case it was not reasonable to require their production or to expose the business of such third parties, so that no *subpoena duces tecum* should issue, but at the hearing defendant would be expected to produce such of its own books and papers as were relevant;

(f) that the Commission would hear evidence as to Buffalo rates. Motion to dismiss denied.

121.—**Kauffman Milling Co. v. Missouri Pac. R. Co., et al.** 4 I. C. C. Rep. 417; 2 Int. Com. Rep. 770, 799; 3 Int. Com. Rep. 119, 400. (Nov. 30, 1890.)

Complaint of differential in favor of wheat against flour from Missouri and Kansas points to points in Texas.

Complainant was a St. Louis miller. The rates on wheat from all Missouri and Kansas points to all Texas competitive points were the same, as were also those on flour, but the flour rates were 5c. per 100 pounds higher, the rates being 46c. and 51c. Formerly the differential had been 15c. and even with this the Missouri and Kansas mills had competed favorably with those in Texas, but this would probably not have been possible at the time of this complaint since the Texas mills had grown much stronger. Texas grew one-half of the wheat it consumed, which half was all ground by its mills. It imported and ground one-quarter and the other one-quarter was flour from Missouri and Kansas. The 5c. differential was the result of a compromise by the railroads intended to please both sets of mills. Defendants' interest lay in building up the Texas mills, since this industry there resulted in much incidental traffic in machinery, etc. The cost of hauling wheat was probably less than in case of flour since more wheat could be got in a car, wheat was largely unloaded by the consignees at elevators, and there was no barrel package (for which no charge was made.) The revenue on wheat per 100 pounds of actual weight carried, including weight of cars, etc., was 27c., while that on flour was 23c. Wheat was less valuable than flour, containing 30% of bran. With rates equal, the St. Louis miller could deliver flour in Texas about 5c. cheaper than the Texas miller

and could import the wheat from Missouri and grind it, and the 5c. differential put the two on a substantial equality. Rates to the east from the Missouri River were the same on wheat and flour, but to some points in the south-east there was a 4c. to 6c. differential against flour.

Held, (Schoonmaker, C.), (a) that in view of the long continued existence of a differential, its recent reduction, the higher return to the roads on wheat shipments, etc., and in view of the fact that the differential merely put both on an equality as regards competitive facilities, the discrimination against the northern millers was at present not unjust or unreasonable.

Complaint dismissed.

Morrison, C., dissented on the ground that the real reason for the decision of the majority was that the differential equalized geographical and natural advantages, an unsound principle which had not been and could not be followed in other cases, and that the difference in the cost of service and in revenue on the two commodities was not here a controlling factor.

122-A.—New York Board of Trade, et al. v. Pennsylvania R. Co., et al. 4 I. C. C. Rep. 447; 2 Int. Com. Rep. 660, 734, 755, 800; 3 Int. Com. Rep. 417. (Jan. 29, 1891.)

Complaint of lower inland rates on imported articles than on similar shipments originating in the United States, and of failure properly to publish import rates.

As a justification of the lower import rates, defendants alleged competition by water, by Canada Railroads, that the inland import rate was really a part of a through rate from abroad, and other conditions rendering the service dissimilar to that in domestic shipments. The Lehigh Valley also alleged unexpired contracts for the transportation of imports. The actual cost of handling domestic and import freight was the same. Certain of the defendants published no import rate at all; others filed none until after consignment by the importer; and most of the rates were made by the foreign agent and accepted by the roads here. Defendants alleged that by reason of the frequent fluctuation of ocean rates it was impossible to file any steady rates on imports. After the filing of the complaint the P. R. R. and other roads applied the domestic inland rate to all imports. The Canadian Pacific had commodity rates on certain articles, which rates were applicable both to domestic and to import shipments, but were on articles made almost exclusively abroad.

Held, (Bragg, C.), (a) that the Act applied to the inland part of a shipment from abroad but not to the foreign part so that rates need not be published abroad;

(b) that joint inland rates must be posted in the United States at ports of entry and at points of destination;

(c) that the fact that articles transported from a port of entry to a point in the United States had come from abroad did not render

the circumstances of such inland transportation different from domestic shipments;

(d) that the inland import rates should be the same as domestic rates for the same shipment;

(e) that as the P. R. R. had discontinued the practice complained of while the complaint was pending, no order would be issued against it, (authorities collected, p. 520);

(f) that a railroad had a right to classify freight for rate making and that the commodity rates here given (forced by the Canadian roads) were not in violation of the Act although they applied almost entirely to articles made exclusively abroad.

Order accordingly.

122-B.—Interstate Commerce Commission v. Texas & Pac. R. Co.
52 Fed. 187; 4 Int. Com. Rep. 114. C. C. S. D. N. Y. (Oct. 4, 1892.)

Petition to enforce order issued in above requiring defendant to desist from charging higher inland rates on domestic traffic from New Orleans to San Francisco, than it charged on freight coming from abroad.

The traffic in question was hauled by defendant on a joint through rate with the Southern Pacific Co. On certain articles the domestic inland rate was three and four times as high as the rate on imported articles of the same kind. The only justification relied on was ocean competition, it appearing that the rates in question on imported articles exceeded the cost of carriage, and were necessary to secure traffic from the ocean carriers and from rival routes.

Held, (Wallace, C. J.), (a) that the failure to make the Southern Pac. Co. a party was immaterial;

(b) that ocean competition did not justify the rates in question.

Order granted.

122-C.—Interstate Commerce Commission v. Texas & Pac. R. Co.
57 Fed. 948; 4 Int. Com. 408; 6 C. C. A. Rep. 653; C. C. A. 2nd Circuit. (Oct. 17, 1893.)

Appeal by defendant from foregoing.

Held, (Shipman, C. J.), (a) that an order by the Commission against two carriers in respect to a joint rate was enforceable against one of them although the court had no jurisdiction over the other;

(b) that although the conditions in question might justify some disparity in rates, the difference was here plainly excessive and as the carriers had made no showing as to what would be a lawful discrimination in view of the circumstances, the order of the Commission would be enforced.

Judgment affirmed.

122-D.—Texas & Pacific R. Co. v. Interstate Commerce Commission.

162 U. S. 197; 5 Int. Com. Rep. 405; 16 S. Ct. Rep. 666;
40 L. Ed. 940. (Mar. 30, 1896.)

Appeal from C. C. A. 2nd Circuit.

Held, (Shiras, J.), (a) that the Commission was a body corporate with legal capacity to be a party plaintiff or defendant in the Federal Courts;

(b) that the Southern Pacific Company was a proper but not a necessary party to this proceeding;

(c) that in passing the Act Congress intended to cover the entire field of foreign and interstate commerce except that wholly within one state;

(d) that it was not the purpose of the Act to re-enforce the provisions of the tariff laws;

(e) that the purpose of the Act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations;

(f) that, in passing upon questions arising under the Act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment;

(g) that among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered;

(h) that if the Commission instead of confining its action to redressing, on complaint made by some particular firm, corporation or locality, some specific disregard by common carriers of provisions of the Act, proposes to promulgate orders, which thereby become rules of action to the carrying companies, the spirit and letter of the Act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country;

(i) that general orders promulgated by the Commission of its own motion, must be confined to the obvious purposes and directions of the Act;

(j) (semble) that the Commission might not, without a complaint or a hearing subject common carriers to penalties;

(k) (semble) that the Commission had power to require all common carriers within reach of its jurisdiction to publish through rates in which they participated to and from foreign countries in connection with ocean lines;

(l) that the Circuit Court of Appeals, having been of opinion that the Commission had erred in its interpretation of the law, should have remanded the case to it for reconsideration under proper instructions, since the defendant was entitled to have its defence considered in the first instance by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded;

(m) that the mere fact of disparity between through and local rates did not result in an undue preference.

Decrees reversed with directions to dismiss the bill.

Harlan, J., Brown, J., and Fuller, C. J., dissented.

123.—**Covington Stock-Yards Co. v. Keith.** 139 U. S. 128; 11 S. Ct. Rep. 461; 35 L. Ed. 73. (Mar. 2, 1891.)

Appeal from C. C. Ky.

Petition against a receiver for a rule to show cause why he should not deliver cattle in earloads to the petitioner at some suitable place outside the stock-yards of the Covington Stock-Yards Co. free from other than the customary freight charges for transportation.

The railroad had made an agreement with the Covington Stock-Yards Co. by which the yard of the latter was practically constituted the railroad's live stock depot, and it had permitted the Stock-Yards Co. to charge 60c. per car for unloading cattle delivered thereto. The petitioner objected to the payment of this charge, maintaining that he was entitled to have the cattle delivered at a suitable depot, free from other than the regular transportation charges.

Held, (Harlan, J.), (a) that it was the Railroad Co.'s duty as a carrier of live stock to provide suitable and necessary means and facilities for receiving live stock offered to it for shipment over its road and connections, as well as for discharging such stock after it reached the place to which it was consigned;

(b) that the railroad could not burden a consignee with any charges for services which it was bound to perform other than the customary charges for transportation.

Decreed that the receiver either deliver cattle at Keith's own yards, or if delivering them at other yards, should not exact other than the regular transportation charges.

124-A.—*Coxe Bros. & Co. v. Lehigh Valley R. R. Co.* 4 I. C. C. Rep. 535; 2 Int. Com. Rep. 195, 229; 3 Int. Com. Rep. 460, (Mar. 13, 1891.)

Complaint of unreasonable rates on anthracite coal from Luzerne County, Pa., to New York, of preference in rates to bituminous coal shippers, of preference of the Lehigh Valley Coal Co. by various "devices", and of unreasonable grouping of mines near complainants' to complainants' disadvantage.

Complainants' mines were about 135 miles from New York. The anthracite coal rate for two years prior to 1887 had been \$1.40 per ton, at which rate the railroad prospered. Prior to this it had been as low as \$1 and as high as \$1.90, and since this time had averaged about \$1.70, having lately been reduced 10c. Defendant's per cent. of operating expenses to income with respect to the coal traffic was 56%, and in respect to the other traffic averaged about 65%. The rate on bituminous coal from the Snow Shoe District was 65c. higher than that on anthracite from complainants' mines, but the Snow Shoe District was twice as far away from New York. The centre of the rate group in which complainants were placed was 14 miles more distant from New York than the average distance of complainants' mines. The L. V. R. R. Co., chartered prior to the Pennsylvania Constitution of 1873, owned the L. V. Coal Co., which was one of its largest coal shippers. The L. V. R. R. Co. lent the coal company \$7,000,000 continuously without interest, which at 5% would amount to 10c. per ton on all coal shipped by that company. The L. V. Coal Co. sold coal at New York at rates which, if the cost of mining and selling were deducted, would leave a much less amount than that charged complainants for transportation. Complainants asked that they be given a rate equal to the difference between what L. V. Coal Co. sold its coal for, and the cost of mining, plus the usual royalty, plus the cost of selling.

Held, (Morrison, C.), (a) that the classification of anthracite and bituminous coal, and of the different sizes of anthracite coal was proper, and in view of the less value of bituminous coal and of the other conditions above stated there was no discrimination in favor of bituminous shippers;

(b) that the \$7,000,000 loan to the L. V. Coal Co. was really a "device" to discriminate in favor of that company to the extent of 10c. per ton and that the tendency was always toward discrimination where a railroad controlled or owned a shipper;

(c) that although there was a seeming discrimination in favor of the L. V. Coal Co. in that under the conditions above stated the railroad, although receiving full rates from the Coal Co., was losing as a stockholder and thus practically transporting its coal for less than the rate charged complainants, yet under the facts the Commission had no power to prevent the Coal Co. from selling coal at a loss to itself;

(d) that the maintenance by defendant, for two years prior to 1887,

of rates lower than those complained of, was strong evidence that the rates so maintained were remunerative and those in question excessive;

(e) that under the circumstances the rate charged the complainants was unreasonable, and should not be higher than \$1.40 (as an average on the three sizes);

(f) that the Commission had power not only to declare a rate unreasonable, but also to declare what was a reasonable rate;

(g) that the complainants suffered no undue prejudice in the grouping above referred to, since whatever disadvantage they suffered from being nearer New York than the centre of the group, they made up by being further from Buffalo on the west.

Order accordingly.

124-B.—Interstate Commerce Commission v. Lehigh Valley R. Co.
74 Fed. 784. C. C. E. D. Pa. (May 11, 1896.)

Petition to enforce order issued in above requiring defendant to desist from charging more than certain named rates on coal.

In estimating the cost of transporting the coal over the route in question the Commission had assumed that in this particular part of the line the cost of carriage bore the same ratio to the total receipts as it did in case of the entire coal traffic of the road.

Held, (Acheson, C. J.), (a) that the method employed by the Commission of arriving at the cost of transporting the coal in question was unreliable and erroneous;

(b) that it had no power to fix maximum rates and the order under consideration was, therefore, unlawful and unenforceable.

Petition dismissed.

125.—Delaware State Grange of Husbandry v. N. Y., Phila. & N. R. Co., et al. 4 I. C. C. Rep. 588; 3 Int. Com. Rep. 554, 828.
(Apr. 13, 1891.)

Complaint of unreasonable fruit rates from Delaware points to New York, of inadequate service, and of higher rates from Norfolk than from intermediate points.

For the fruit business special cars were required, especially fitted up for this business and used only in fruit season. Faster service was also necessary, with fewer cars in a train load, and the cars were necessarily returned empty, the cost of handling being estimated by the railroad as about double that of ordinary freight. At the then rates there was some evidence that the fruit business was profitable to shippers, but the weight of the evidence was that rates were now higher than the traffic could bear and complainant asked that such rates be reduced one-third. The traffic in question amounted to 1.89% of the defendant's business, but such business yielded 2.779% of defendant's total revenue. The rate per ton mile on such freight was 5c. to 6½c., while on grain it was 1-7c. Ton mile rates from the south and west were much less, but for much longer hauls. At Nor-

folk there was strong water competition. The inadequacy of the service was remedied while the case was pending.

Held, (By the Commission), (a) that the question of the relative reasonableness of the rates in question to those on other freight could not be determined for lack of adequate data;

(b) that the fruit rates from local points north of Norfolk were unreasonably high since they yielded more than enough to pay double the cost of the traffic, there being no competition for this freight;

(c) that although, where an article of freight would not yield such a price at a distance as to warrant its transportation there at a reasonable rate with a profit to the shipper, the railroad was not bound to carry it at a loss to itself, yet the railroad might not charge a rate which yielded to it an unreasonably high profit at the expense of the shipper and that wherever possible, rates should bear a fair relation to the commercial value of the commodities transported;

(d) that although an exceptional rate was here proper, the rate in question was too high and should be reduced by from 25% to 10% on the various commodities.

Order accordingly.

In 5 I. C. C. Rep. 161 (1892), defendants moved for a rehearing of the foregoing, presenting new facts which the Commission held to be immaterial, and accordingly the motion was overruled.

126.—*Squire & Co. v. Michigan C. R. Co., et al.* 4 I. C. C. Rep. 611; 2 Int. Com. Rep. 303, 484; 3 Int. Com. Rep. 515. (Apr. 21, 1891.)

Complaint of unreasonable rates on hogs from the west to the Atlantic Coast, compared to those on hog products, resulting in undue preference of western hog slaughterers.

Complainants were hog-slaughterers near Boston, their main supply coming by shipments of live hogs from western points. They were not shippers of hog products from the west to the east. The live hog and the product were competitors, and the complainants contended there should be a fixed proportion between the rates on each. In March, 1886, the rates per 100 pounds were fixed at 30c. and 65c., for live hogs and hog products, respectively. In November, 1887, the rate on the product was greatly reduced without a change in the rate on live hogs, the complainants being thereby injured. It appeared that the live hog shrinks 3 to 5% in transit. The actual dead weight hauled per car of live hogs was 46,000 pounds, and of products 64,000, the cars weighing 22,000 pounds, and 40,000 pounds respectively, so that if the relation of rates on hogs and products were fixed so as to produce the same revenue in each case per 100 pounds of dead weight carried, it would be as 30 to 42. The refrigerator cars required for products were heavier and more expensive than the ordinary cars in which live hogs were carried; the product

was more valuable than the live hogs; and live hogs were more quickly loaded and unloaded.

Held, (Veazey, C.), (a) that the Act did not apply only to preferences in hauling the same article, but required proper relative rates between all competitive commodities;

(b) that the rates on two such commodities being fair, neither rate could be altered arbitrarily to the other's prejudice;

(c) that the Commission would not attempt to equalize geographical disadvantages, or to put these two articles on a commercial equality;

(d) that there should be a fixed ratio between the rates on the two commodities, based on the relative cost of service, without considering other items, and the rate on products should be at least 50% greater, the evidence not being sufficient to determine this ratio exactly.

127.—*Shamberg v. Delaware, L. & W. R. Co., et al.* 4 I. C. C. Rep. 630; 3 Int. Com. Rep. 173. (Apr. 25, 1891.)

Complaint of discrimination in favor of certain of complainant's competitors in live-stock shipments by the payment to them of unreasonable car-mileage and of yardage charges.

Complainant was a live-stock dealer in New York City, and complained that defendant discriminated in favor of Schwarzchild & Sulzberger, also live-stock dealers. His competitors, Schwarzchild & Sulzberger, had formed an express company, and had agreed to furnish improved cars to defendant for transportation of live-stock. As rental, the defendant paid the express company three-quarters of a cent per mile, whether loaded or empty. Extraordinary rights of way were given these special cars to enable them to make a large mileage, and also other privileges which produced profits to them entirely out of proportion to the service rendered the defendant. Defendant also paid S. & S. yardage of $3\frac{1}{2}$ c. per 100 pounds for all cattle put in latter's yard, including cattle of S. & S. after delivery to them. Defendant also gave to S. & S. free lighterage.

Held, (Bragg, C.), (a) that the above agreement was clearly an illegal "device" to favor S. & S.;

(b) that the unlawful preference from the payment of car-mileage and of yardage should cease.

Order accordingly.

128-A.—*Boston Fruit and Produce Exchange v. New York & N. E. R. Co., et al.* 4 I. C. C. Rep. 664; 3 Int. Com. Rep. 100, 122, 493, 604. (Mar. 19, 1891.)

Complaint of unreasonable rates on peaches from Delaware points to Boston.

The traffic involved extra fast service, special cars not fitted for return loads, free return of baskets, the conveyance of the cars through crowded terminals at Jersey City and by float around New

York City. Rates on melons and oranges from the south were relatively much less and the peach rate to Buffalo was but two-thirds that to Boston although the distance was somewhat greater. Peach rates from the west were also relatively less. The P. R. R. Co. made a charge varying with the size of the cars but the other defendants did not. Defendants contended that they were under no common arrangement for continuous carriage of this traffic. An agreement, however, had been filed with the Commission (not in evidence in this case) by which it was understood that a through line had been established, and this traffic went straight through at through rates on a through schedule.

Held, (Veazey, C.), (a) that complainant was a proper party to bring suit;

(b) that the agreement and tariffs filed were evidence which the Commission might consider in this case;

(c) that defendants were under a common arrangement as to this traffic which made them subject to the Act;

(d) that although the defendants were entitled to charge special rates by reason of the special service here rendered, the rates in question were excessive and should be reduced to figures given, the rate being graded with the size of the car.

128-B.—Boston Fruit and Produce Exchange v. New York & N. E. R. Co., et al. 5 I. C. C. Rep. 1; 3 Int. Com. Rep. 109, 122, 493, 604. (July 2, 1891.)

Motion by P. R. R. for rehearing of foregoing.

The P. R. R. Co. alleged that by the finding and order by the Commission the through rate was fixed at 4 48-100c. per ton mile, which necessitated a division among the participating roads on a mileage basis, and that this was unfair to the petitioner, since the latter was entitled to a greater share on account of its collection of the traffic and furnishing cars therefor.

Held, (By the Commission), that the order had referred merely to the total rate and the division of such rate among the roads might be on whatever basis they agreed.

Motion overruled.

129.—Hamilton & Brown v. Chattanooga, R. & C. R. Co., et al. 4 I. C. C. Rep. 686; 3 Int. Com. Rep. 110, 122, 482. (Mar. 19, 1891.)

Complaint of preference in rates of Carrollton and Cedartown, Ga., over Kramer, Ga.

Kramer was situated on defendant's lines between Carrollton and Cedartown and in either direction the Kramer rates exceeded those to and from these points by the amount of the local rates. The connecting roads participating in through hauls to New York, as to the rates on which complaint was made, were not parties to these proceedings.

Held, (Yeomans, C.), (a) that as the connecting roads were not par-

ties no order could then be made with reference to the through rates;

(b) that the trade centre or basing point system of making rates, here used, was again condemned by the Commission;

(c) that as to the points more distant than Kramer, the rate violated Sec. 4, and as to the nearer point it was an unreasonable preference in every case;

(d) that defendants should adjust their rates in accordance with the foregoing principles, and the connecting roads, not parties, should appear by a day certain and show cause why the rates in question should not be so adjusted as to comply with the provisions of the Act.

Order accordingly.

130-A.—New York & Northern R. Co. v. New York & N. E. R. Co.; Housatonic R. Co., and N. E. Term. Co. 4 I. C. C. Rep. 702; 3 Int. Com. Rep. 174, 542. (May 6, 1891.)

Complaint of refusal by the N. Y. & N. E. to continue a through route from New England points to New York City, and of discrimination in favor of the other defendants in allowing such through rate via their lines.

Complainant's line ran from Brewsters, N. Y., a distance of 54 miles to High Bridge, N. Y., at which point the cars were put on flat boats and towed to New York under a contract with one Starin. For eight years past complainant had had a through traffic arrangement with the N. Y. & N. E. connecting at Brewsters as to points on the N. Y. & N. E., especially at Danbury, Conn., (10 miles east of Brewsters). At Danbury and Hawleyville, Conn., the N. Y. & N. E. connected with the Housatonic road which ran to Wilson's Point, Conn., a distance by water from New York of 40 miles. Prior to 1889 the N. Y. & N. E. could not reach New York via Wilson's Point. They then organized the New England Terminal Co., each subscribing to one-half the stock and guaranteeing the bonds, and notified complainant that the through route to New York via complainant's line was discontinued, although to points north of High Bridge it was still kept in force. The route to New York via Brewster was more convenient to shippers from Danbury and from certain other points than the new route via Wilson's Point, but if such shippers wished to ship by way of Brewsters, under the new arrangement they had to pay the local rate by N. Y. & N. E. to Brewsters (higher than the former proportion of the through rate) and rebill the freight at Brewsters to New York. Rates via the new route were reasonable. Complainant was entirely solvent.

Held, (Cooley, Ch.), (a) that the present case was distinguishable from *Little Rock, etc. v. East Tenn., etc.*, (77), in that the prayer in that case asked that defendant be ordered to make a through route via complainant's line which would divert traffic from defendant's (the N. Y. & N. E.) own road while here it would divert it merely

from a competitor of complainant (the N. E. Tenn. Co.); though a road might lawfully discriminate in favor of its own line, it could not discriminate between connecting carriers;

(b) that other decisions were distinguishable in that they involved carriage by water;

(c) that in order to justify a discrimination there must be a dissimilarity of circumstances resulting from physical conditions and not merely from business motives;

(d) that the fact that the defendant, the N. Y. & N. E., owned half the stock of the N. E. Terminal Co. was immaterial.

Ordered that the N. Y. & N. E. cease from the discrimination against complainant.

Bragg, C., concurred on the ground that the difficulty in granting the relief prayed for in the Little Rock case lay solely in the fact that the Commission could not fix the divisions of the through rate prayed for and that this difficulty was not here present since there was an existing arrangement as to all points except New York and the latter had formerly existed and need only be put in force again.

130-B.—New York & N. R. Co. v. New York & N. E. R. Co. 50 Fed. 867; 4 Int. Com. Rep. 116. C. C. S. D. N. Y. (May 31, 1892.)

Motion to dismiss petition to compel obedience to order of Commission issued in above requiring defendant to allow complainant reasonable, proper and equal facilities for the interchange of traffic to those allowed the Housatonic R. Co., and also to cease discrimination against the complainant in respect to rates and charges in favor of the Housatonic R. Co.

The acts complained of consisted in a threatened refusal to continue a through line via complainant's road, with through rates and bills of lading and discrimination in allowing very poor connections in comparison with those in reference to the trains of the Housatonic road.

Held, (Lacombe, C. J.), (a) that the facts constituted a violation of Paragraph 2 of Sec. 3;

(b) that the fact that defendant formed a through line with the Housatonic Co., did not authorize it to favor that company, as the latter company was in no sense owned or controlled by it;

(c) that defendant's interest in the terminal company connecting with the Housatonic Company did not warrant defendant in favoring the Housatonic Co.;

(d) (semble) that a road might discriminate in favor of a connecting line in which it had an interest without violating Sec. 3.

Motion denied.

131.—Beaver & Co. v. Pittsburgh, C. & St. L. R. Co., et al. 4 I. C. C. Rep. 733; 3 Int Com. Rep. 285, 564. (May 16, 1891.)

Complaint of unreasonable rate and classification of complainant's make of soap and preference of another make.

Complainants made Grand Pa's Wonder Soap, and advertised it as good for both toilet and laundry. It was first listed as 4th class, but was afterwards transferred to the 2nd class, with the toilet soaps, while Ivory Soap and two other soaps more valuable and used for the same purposes, were left with the laundry soaps in the 4th class.

Held, (Cooley, Ch.), that the facts showed a preference of Ivory Soap and complainant's soap should be in the same class with it.

132-A.—James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. R. Co., et al. 4 I. C. C. Rep. 744; 2 Int. Com. Rep. 625; 3 Int. Com. Rep. 682. (June 29, 1891.)

Complaint of preference in rates on buggies from Cincinnati, Ohio, of Atlanta and Augusta, Ga., over Social Circle, Ga., and of violation of Sec. 4 in rates to Social Circle and Augusta.

The C., N. O. & T. P. R. Co., ran from Cincinnati to Chattanooga, 336 miles, its local rate on buggies to Chattanooga being 76c. per 100 pounds. Its proportion of the through haul to Atlanta and Social Circle, (474 and 526 miles) was 75 9-10c., on the haul to Augusta (645 miles) 55 7-10c. The Western and Atlantic ran from Chattanooga to Atlanta (138 miles) its local rate between these points being 57c., its proportion on shipments from Cincinnati to Atlanta and Social Circle 31 1-10c., and to Augusta 22 9-10c. The Georgia Railroad ran from Atlanta to Augusta (171 miles) its local between these points being 64c., its local to Social Circle (52 miles east of Atlanta and 119 miles west of Augusta) 30c., and its proportion on through hauls from Cincinnati to Augusta 28 4-10c. The proportion of the through rate received by the C., N. O. & T. P. R. Co., and by the W. & A. R. Co., being the same on shipments to Atlanta and to Social Circle and the Georgia R. Co. declining to receive less than its full local rate on through shipments to Social Circle, rates to the latter were made by adding to the \$1.07 rate to Atlanta, the 30c. local, making a total rate of \$1.37, while the through rate to Augusta, 119 miles beyond, was \$1.07, the same as that to Atlanta. Defendants sought to justify this rate relation on the ground, first, that no through route existed to Social Circle, although such routes did exist to Atlanta and Augusta, and, second, that unless the Augusta rate were made very low, shippers of buggies by water from Baltimore to Augusta could undersell the Cincinnati buggies; in other words, that commercial or market competition from Baltimore justified a lower rate to Augusta. It appeared that buggies were transported by defendants from Cincinnati to Social Circle on through bills of lading.

Held, (Morrison, C.), (a) that since the freight in question was transported through to Social Circle on through bills of lading, it was a through shipment over a through route;

(b) that competition by water, in order to justify an exception to

Sec. 4, must be such that unless the railroad seeking to justify the low rate hauled the freight at that rate, the same freight would be carried by water;

(c) that an exception to Sec. 4 could not be made to equalize trade conditions and that commercial or market competition was hence no justification for the violation of Sec. 4 in this case;

(d) that the rate to Atlanta was unreasonable and should not exceed \$1.00;

(e) that the rate to Social Circle should not exceed that to Augusta, but as no one appeared to be injured by its being as low as that to Atlanta, this was proper.

Order accordingly.

132-B.—Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., et al. 56 Fed. 925; 4 Int. Com. Rep. 332. C. C. N. D. Ga. (June 3, 1893.)

Petition to enforce order issued in above requiring defendants to desist from an undue preference and a violation of Sec. 4, in exacting a higher rate on buggies from Cincinnati, Ohio, to Social Circle, Ga., than to Augusta, Ga., a more distant point, and from charging a rate to Atlanta higher than \$1.00 per 100 pounds.

Social Circle was situated between Atlanta and Augusta. The three defendants had joint through rates to Atlanta and Augusta at \$1.07 to each point, but rates to Social Circle were made by adding the local rate of the Georgia R. Co. from Atlanta to Social Circle, of 30c. The freight went through, however, to Social Circle on through bills of lading. Defendants alleged as a justification that there was no common arrangement as to Social Circle traffic and that market competition with Baltimore forced the rate down at Augusta. The Commission had reached its conclusion with reference to the Atlanta rate by comparison with a rate to a competitive point and on the testimony of but one witness.

Held, (Newman, D. J.), (a) that the Court was not confined to the evidence before the Commission but had power to decide the case on such additional evidence as it saw fit to hear and consider;

(b) that the Social Circle traffic was not under a common arrangement subject to the Act;

(c) that all kinds of competition were properly to be considered in fixing or passing on the reasonableness of rates;

(d) that the Commission's conclusions with regard to the Atlanta rate were erroneous.

Bill dismissed.

(Reversed by C. C. A. 5th Circuit without opinion, 13 U. S. App. 730, and defendants ordered to comply with Sec. 4. (See order 162 U. S. 188-189), but that part of the Commission's order requiring no greater rate to Atlanta than \$1.00 per 100 pounds, refused.)

132-C.—Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce

Commission; Interstate Commerce Commission v. Cincinnati, N. O. & P. R. Co. 162 U. S. 184; 16 S. Ct. Rep. 700; 40 L. Ed. 935; 4 Int. Com. Rep. 582.

Appeals from C. C. A., 5th Circuit, (Mar. 30, 1896.)

Held, (Shiras, J.), (a) that the traffic to Social Circle was under a common arrangement subject to the Act;

(b) that a local intrastate road subjecting itself to the Commission by entering into a common arrangement with connecting lines, as regards traffic to certain points on its line, thereby became subject as to traffic to intermediate points;

(c) that the finding of the Commission that the circumstances and conditions at Augusta and Social Circle were substantially similar, having been affirmed by the Circuit Court of Appeals, would not be disturbed;

(d) that the Commission had no power to fix maximum rates.
Decree affirmed.

134.—United States v. Egan, et al. 47 Fed. 112; 3 Int. Com. Rep. 459. D. C. D. Minn., 3rd Div. (July 9, 1891.)

Indictment against general manager and general passenger agent for selling passenger tickets at less than rates published and filed.

Defendant had filed and posted two passenger rates between St. Paul and Chicago, one a "first-class unlimited ticket" at \$11.50, and the other a "first-class limited ticket, limit one day" at \$7.00. Holders of unlimited tickets were allowed to stop over as many times as they wished. Defendants sold some tickets at \$7.00 with no time limit, but with no stop over privileges.

Held, (Thayer, J.), that the denial of the stop over privilege was a limitation on the privilege allowed on the ticket and brought it within the description "limited ticket" in the tariff, since the word "limited" there might refer not only to time but to other privileges as well.

Binding instructions to acquit.

135.—Little Rock & M. R. Co. v. East Tenn., Va. & Ga. R. Co., et al. 47 Fed. 771; 4 Int. Com. Rep. 261. (Sept. 16, 1891.)

C. C. W. D. Tenn.

Demurrer to bill to compel defendant to allow complainant equal facilities allowed other carriers.

The facts here were the same as in (93) except that the relief prayed was against the East Tenn., Va. & Ga. R. Co., which connected at Memphis with the complainant and with the Bald Knob branch of defendant, the St. Louis, I. M. & S. R. Co. The latter company had refused to honor through tickets issued by the East Tenn., Va. & Ga. R. Co. to points west of Little Rock via the complainant's line, whereupon that company had discontinued their sale.

Held, (Hammond, J.), (a) that the action of the East Tenn., Va. &

Ga. R. Co. was the necessary result of the refusal of the other defendant to honor through tickets over complainant's line where it had facilities of its own between the same points;

(b) that defendant, the St. Louis, I. M. & S. R. Co., was justified in diverting traffic over its own road in this way;

(c) that it was reasonable and not an undue discrimination for a railroad to offer superior facilities for transportation between given points over its own line, than when a part of such transportation was in part by the line of a rival railroad;

(d) (semble) that if it appeared that the East Tenn., Va. & Ga. R. Co. refused to allow to complainant the same facilities as regards passengers going to Little Rock or some other point on complainant's own line, that it allowed the St. Louis, I. M. & S. R. Co. to the same point, Section 3 of the Act would be violated thereby and the Courts would not be powerless to redress the wrong thus inflicted;

(e) (semble) that even though the Court had no power in such a case, to prevent by injunction the carrying out of the discriminating contract with the rival carrier until equal facilities were allowed complainant, there would be a remedy in a criminal prosecution of the offending carrier or its officers;

(f) (semble) that the case at bar was really indistinguishable from that of *New York & N. R. Co. v. N. Y. & N. E. R. Co.*, (130-B), since the ownership by the defendant in the stock of the connecting carrier beyond the line of the preferred road was equivalent to a direct interest in that road;

(g) (semble) that the remedies provided by the Act were not exclusive of the general remedies given by the judiciary act whereby courts were given general powers in cases and controversies arising under Acts of Congress.

Demurrer sustained.

136.—*Buchanan v. Northern Pacific R. R. Co.* 5 I. C. C. Rep. 7; 3 Int. Com. Rep. 655. (Oct. 21, 1891.)

Complaint of unreasonable wheat and barley rates from Ritzville, Wash., to St. Paul, Minn.

Complainant had purchased a farm at Ritzville, at a time when defendant's rate on wheat and barley to St. Paul was 40c. per 100 pounds. The road was new and most of the traffic west, with many east-bound empties. Subsequently the rate was raised to 50c. on wheat and 56c. on barley. It appeared that the traffic moved now almost entirely east, and though greatly increased, was not heavy. It further appeared that the expense of traffic was 1.8c. per ton mile, and that the rate on wheat at 50c. amounted to about 61-3 mills per ton mile for traffic amounting to only about 46 carloads during the year. The railroad ran over heavy grades. The rate on grain from Chicago to New York during the same period was 4.6 mills per ton mile. The change in rates made it impossible for complainant to farm at a profit.

Held, (Veazey, C.), (a) that the rates were reasonable, in spite of the hardness of complainant's case;

(b) that the conditions between Chicago and New York were not such as to justify the rate between those points being used as a standard for comparison.

(Statement of certain considerations controlling the fixing of rates p. 11.)

137.—Florida Railroad Commission v. Savannah F. & W. R. Co., et al. 5 I. C. C. Rep. 13; 3 Int. Com. Rep. 414, 688. (Oct. 29, 1891.)

Complaint of unreasonable rates on oranges from Florida to New York and other northern points.

The rates in question were all-rail and through water and rail. The complaint was the result of an advance in rates by 10c. per box (80 pounds), being 20% to 33% of the rates formerly maintained for four years or more preceding. Defendants contended that the old rate did not afford reasonable compensation for the service and was the result of bad times, having been raised to a reasonable figure when the prosperity of the trade justified the increase. The traffic required fast time, special trains, docks, etc., and there was little return freight. The business had been steadily increasing and was very profitable to the roads. Cotton was four times as valuable per ton and occupied twice the space taken by oranges, while the rate was 20% higher. Oranges were not easily spoiled and could be taken readily by water. The roads had of late years increased the facilities for handling the orange traffic, but the improvements had been made a considerable time before the increase in rates and appeared to have been for the purpose of acquiring competitive business rather than because necessary to preserve fruit. The Savannah, Florida and Western Railroad, which constituted part of the through rail or rail and water line, at the old rate had received 1.88c. per ton-mile for a 172-mile haul, and at the new rate received 2.6c. per ton-mile, having secured 5c. out of the 10c. increase. Its average return on other freight was 1.378c. per ton-mile. The Florida Central & Peninsula road was situated wholly in the State of Florida, but constituted part of the through route. It appeared that certain of the roads had not properly published the advance in rates, but all shippers had known of them by reason of newspaper agitation, and it did not appear that the failure to publish had been wilful. After the hearing and prior to the decision of this case, the law which had created the complainant Commission had been repealed.

Held, (By the Commission) (a) that the repeal of the Florida Railroad Commission Act did not affect this case, as the Interstate Commerce Commission might proceed without any complainant, if it saw fit;

(b) that when a rate which had long been maintained was suddenly materially advanced, the roads making such advance were bound

to justify it, especially where the traffic was of such importance as the present;

(c) that an intrastate road participating in interstate traffic, was, as to such traffic, subject to the Act;

(d) that although the Commission was not concerned with the proportions in which parties to a through route divided a through rate, yet such proportions might be significant in determining the reasonableness of the total rate, and the increase of 5c. per box to the S. F. & W. seemed unreasonable;

(e) that the Commission could ask the Attorney General to prosecute for failure to publish rates only where such failure was wilful;

(f) that damages could be recovered by shippers for failure on the part of carriers to publish rates only where shippers were injured thereby and such was not the case where shippers had actual notice of the rates in force;

(g) that an advance of 5c. per box over former rates was reasonable, but that present rates were unreasonable to the extent of 5c. per box;

(h) that payments of charges in excess of this reasonable rate should be refunded, and the case would be held open to allow proof of individual damages.

Order accordingly.

Rehearing denied, 5 I. C. C. Rep. 136. (1892.)

138-A.—Osborne v. Chicago & N. W. Ry. Co. 48 Fed. 49. C. C. S. D. Ia. C. D. (Nov. 9, 1891.)

Charge to jury in action at law for damages for violation of Sec. 4.

Defendant's road ran from Missouri Valley, Ia., to Chicago via Scranton, Ia., a point 88 miles east of Missouri Valley. Its regular local rate on corn from Scranton to Chicago was 18c. per 100 pounds. At Missouri Valley it connected with other roads running west into Nebraska, to Blair, Neb. It formed part of a through line with these roads and roads east of Chicago to the Atlantic Coast, and of the through rate to the coast by these roads, defendant received as its share from Missouri Valley to Turner and Rochelle (points near Chicago and en route thereto from Scranton), 11c. per 100 pounds. Defendants showed that there was severe competition with other roads from Blair and western points.

Held, (Shiras, J., charging jury), (a) that by joining in a through tariff defendant did not relieve itself from the operation of Sec. 4;

(b) that the competition with other roads, while a consideration which might justify the Commission in granting relief under Sec. 4, did not justify an exception to it by the carriers on their own responsibility;

(c) that the question as to the similarity of the circumstances and conditions in the two hauls in question was one for the jury;

(d) that the measure of damages was the difference between the

two rates multiplied by the number of 100 pounds shipped by the complainant;

(e) that the jury might award interest if it saw fit.

138-B.—Junod v. Chicago & N. W. R. Co. 47 Fed. 290. C. C. S. D. Ia. (1891.)

Same case as to shipper from Carroll, Ia., and same charge substantially. Judge Shiras also said here that if the Blair grain was really intended for and taken to Chicago it did not matter that it was billed merely to Rochelle.

138-C.—Chicago & N. W. R. Co. v. Osborne. 52 Fed. 912; 10 U. S. App. 430; 3 C. C. A. Rep. 347; 4 Int. Com. Rep. 257. C. C. A., 8th Circuit. (Oct. 17, 1892.)

Held, (Brewer, Cir. Just.), (a) that where two roads unite in a joint tariff they form a new line independent of each;

(b) that the rates charged under such joint tariff are not the basis by which the reasonableness of local rates is determinable;

(c) (semble) that two roads under a joint tariff might charge a less total rate for a through haul than the local rate of either for a part of it, without violating Sec. 4;

(d) (semble) that no power existed at common law or under the Act in the Courts or Commission to compel connecting companies to contract with each other, to abandon full control of their separate roads, or to unite in a joint tariff;

(e) (semble) that defendant was not bound to post at Scranton its joint rates for Blair or points west, as no competing line touched Scranton.

Judgment reversed.

138-D.—Chicago & N. W. R. Co. v. Junod & Culbertson. 52 Fed. 917. (Nov. 15, 1893.)

Judgment reversed on same principle.

139.—Lehmann, Higginson & Co. v. Texas & Pac. R. Co., et al. 5 I. C. C. Rep. 44; 2 Int. Com. Rep. 548; 3 Int. Com. Rep. 706. (Nov. 30, 1891.)

Complaint of unreasonable rates on sugar from New Orleans to Humboldt, Kas., and demand for reparation.

For six months prior to April, 1889, defendants had carried sugar from New Orleans to Humboldt at 30c. per 100 pounds, that being the same as the rate to Parsons and Kansas City, but they then raised the rate to 42c., at which complainants shipped three carloads, the 12c. excess alleged amounting to \$141.24. The Texas and Pacific road ran from New Orleans to Fort Worth, Tex., and the Missouri Pacific from there to Kansas City and to Humboldt. Humboldt was on a branch line which left the defendants' main line to Kansas City at Parsons. The only rates published by the defendants to Humboldt

or Kansas City were the locals over each road and no joint tariff had been established or published although the service was a continuous one. A 30c. rate to Kansas City had been filed by the T. & P., but not concurred in by the other roads.

Held, (Morrison, C.), (a) that where a road actually participated in a through haul to a given point, it could not charge a higher rate than to a more distant point merely by denying that it was party to a through rate to the intermediate point;

(b) that the only rate legally published was the sum of the locals, since it was not a compliance with Sec. 6 for the initial road to publish a through rate without the connecting roads filing their concurrence in such rate;

(c) that the 30c. rate to Parsons was reasonable;

(d) that a higher rate than this to Kansas City was proper, but not necessary;

(e) that a higher rate to Humboldt was proper, it being on a branch line, but 42c. was an excessive rate, a reasonable rate being 36c.;

(f) that defendant should refund the excess on the goods shipped at a rate over 36c.

Order accordingly.

140.—*Hezel Milling Co. v. St. Louis, A. & T. H. R. Co., et al.*
5 I. C. C. Rep. 57; 2 Int. Com. Rep. 571; 3 Int. Com. Rep.
701. (Dec. 15, 1891.)

Complaint of preference of St. Louis shippers over those at East St. Louis by payment by defendant of charges for hauling freight to defendant's station for the former and not for the latter.

Complainant was a flour manufacturer at East St. Louis. Defendants had a freight station in East St. Louis and none in St. Louis. Flour from St. Louis shippers was taken to the East St. Louis station in three ways: (1) by the Terminal Association of St. Louis, from its station in St. Louis, by rail across the river at a charge of 4c. per barrel, which was paid by the railroads; (2) by the St. Louis Transfer Co. in wagons from its depot in St. Louis, at 8c. per barrel, also paid by the railroads; (3) by wagons of the Transfer Co. from the shipper's mills at 8c. per barrel, the shipper in this case paying 4c. and the railroad 4c. In East St. Louis complainant delivered its flour either at defendant's freight depot at an expense of 6c. per barrel, or by loading cars on a siding at complainant's mill at a cost of 3c. per barrel. Cars delivered at the siding were required by the railroad to be cleaned by complainant and loaded in the order of delivery, freight for near points being placed in the front of the car. Cars were switched to complainant's siding free of charge, but there were not enough cars sent in in this way to supply complainant's needs. The rates from St. Louis and East St. Louis were ostensibly the same, but on shipments from St. Louis the railroads in fact received on the average 6c. less than on shipments from East St. Louis.

Held, (Veazey, C.), (a) that the present was not a case involving the question as to the propriety of free cartage to two points, one of which was more distant from the railroad than the other, since in the present case the railroad paid part of the expense of the haul to its station in case of certain shipments and not in case of others;

(b) that for the carrier to pay the larger expense of transportation of a remote shipper's merchandise to the station, and not to pay the less expense of the nearer shipper's merchandise was the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate;

(c) that so long as defendants maintained the practice of paying all or part of the expense of hauling St. Louis flour to their freight stations they must equalize this by charging East St. Louis flour shippers 6c. less on flour not loaded at private sidings;

(d) that in case of the flour loaded at private sidings there was no discrimination between shipments so loaded and that of St. Louis shippers, the expense of loading being equivalent to that necessarily incurred by St. Louis shippers;

(e) that the rule requiring complainant to clean cars delivered at its siding was unreasonable;

(f) that the rule requiring complainant to load cars in order of delivery was unreasonable.

Order accordingly.

141.—*MacLoon v. Chicago & N. W. R. Co.* 5 I. C. C. Rep. 84; 3 Int. Com. Rep. 452, 711. (Jan. 12, 1892.)

Complaint of discrimination against complainant in favor of other shippers by unreasonable demand on complainant as a condition of receiving his freight, and demand for reparation.

Complainant had a coal yard situated on a switch of the Chicago, Milwaukee & St. Paul, at Janesville, Wis. The Car Association to which the defendant and the C. M. & St. P. both belonged had a rule charging \$1 per day demurrage for every car not unloaded after 48 hours. Complainant had shipped in two cars of stone which had not been unloaded in time and had refused to pay the demurrage. He was then notified that no more cars would be delivered to him unless in future he agreed to pay the demurrage. He interpreted this to mean that he must agree to pay in advance, whether the demand was legal or unreasonable, but defendant claimed that it meant only that he must agree to pay lawful charges. He was entirely solvent. Two carloads of coal then came in consigned to him but defendants refused to deliver them unless he gave the required promise.

Held, (Veazey, C.), (a) that complainant's interpretation of the demand was the more reasonable one;

(b) that there was an unreasonable discrimination against complainant in favor of other shippers;

(c) that although under the Act as first passed, the Commission had no power to award damages, the amendment of March 2, 1889, remedied this by providing for an appeal to a jury, and as the Courts had held a complainant precluded from recovering damages in Court after he had claimed them before the Commission (even though the Commission had refused to pass on the question), it was the Commission's duty to pass on the question of damages wherever such were claimed;

(d) that since the evidence as to damages was not sufficient on which to base a finding the case would be held open;

(e) that inasmuch as the discrimination in question was evidently the result of a misunderstanding, no order would be issued, since the case would evidently be amicably adjusted by the parties.

142.—*Perry v. Florida C. & P. R. Co., et al.* 5 I. C. C. Rep. 97; 3 Int. Com. Rep. 416, 740. (Jan. 28, 1892.)

Complaint of unreasonable rates on strawberries from Lawtrey, Fla., to New York, and of violation of Sec. 4.

Lawtrey was 39 miles south of Callahan, and 32 miles north of Gainesville, all three towns being on the branch of the Florida Central & Peninsula, which ran from Gainesville to Wayercross (the latter being 56 miles north of Callahan). The Savannah, Florida & Western ran to Wayercross from Gainesville (154 miles) and beyond toward New York. In January and February, 1891 (for one week only) there had been a strawberry rate in force from Callahan of \$1.66½ per crate of 50 pounds, from Lawtrey, \$2.16½, and from Gainesville, \$1.83½, but at the time this complaint was filed the rates had been increased to \$2.01 from Callahan, \$2.51 from Lawtrey, and \$2.31 from Gainesville. These rates did not include charges for refrigeration (paid to the Refrigerator Car Co.), which were 69c. per crate. Berries were very perishable freight, and were shipped in special cars which could carry no return loads. Rates on oranges were much lower but the volume of the berry traffic was much less, and oranges could be loaded heavier in a car, could go by sea and without refrigerator cars. The actual freight on a car of oranges was only \$120 as compared to \$381.80 on one of strawberries. Defendants contended that it would do complainants no good to have an order issued that no higher rate be charged from Lawtrey via Callahan than from Gainesville via Lawtrey, since the roads could haul all the Lawtrey freight round by way of Gainesville, and thus avoid Sec. 4.

Held, (Veazey, C.), (a) that a reasonable rate from Callahan was twice the regular first class rate (the return of the cars empty entitling the road to double freight) with 30c. per crate added for the extra cost and risk of handling berries, making a rate of \$1.06½ per crate, or \$3.33 per 100 pounds, and that the rate from Lawtrey should not exceed this rate by more than a reasonable amount above this figure;

(b) that since freight was actually shipped from Lawtrey via Callahan and from Gainesville via Lawtrey, defendants were not justified under Sec. 4 merely because it might be shipped by another route;

(c) that they were not justified by the competition of the S. F. & W. between Gainesville and Waycross;

(d) that the Commission had power to declare what was a reasonable rate, that being necessary in order to award damages suffered by an overcharge;

(e) that the damage alleged by reason of berries being left to rot, because the unreasonable rate would not permit their being sent to market, was too indefinite on which to base an order for reparation.

Order accordingly.

Followed in *Rising, et al. v. Florida C. & P., et al.*, 5 I. C. C. Rep. 120. (Jan. 28, 1892.)

143.—Murphy, Wasey & Co. v. Wabash R. Co., et al. 5 I. C. C. Rep. 122; 3 Int. Com. Rep. 649, 725. (Jan. 30, 1892.)

Complaint of unreasonable rates on chair and bed materials from Detroit, Mich., to Omaha, Neb., via Chicago and Mississippi River points.

Complainants made the rough parts of chairs and beds at their Detroit factory and shipped these to Omaha, where they were put together. The carload rates (carloads of 25,000 pounds), on such rough materials under the Official Classification in force as far as Chicago and the Mississippi River points, were 10c. and 16½c. per 100 pounds respectively (these being the proportions of the through rates to Omaha.) These were 6th class rates and admittedly reasonable. The Western Classification in force from Chicago and the Mississippi River to Omaha, classed the rough materials as 4th class along with finished chairs, the rates being 30c. and 25c. respectively. Complainants were the only shippers of these articles from Detroit, had shipped 100 carloads the previous year, and expected to ship 200 to 300 carloads per year in future. 25,000 pounds of these materials could be placed in a car as compared with 7,000 pounds of chairs. Chairs were four times as valuable per pound. The freight on a carload of materials was \$75, while that on one of chairs was \$36, and the rate per ton mile on materials from Chicago was considerably greater than an ordinary freight. Certain of defendant's freight agents had admitted that a 17½c. rate from Chicago would be reasonable and unusually remunerative.

Held, (Veazey, C.), (a) that a road should receive more in the aggregate for a large than for a small carload, but that the rate per 100 pounds on the former should, as a general rule, be less;

(b) that in fixing a rate the amount of the article which could be loaded in a car was important;

(c) that the Commission had power to fix a maximum rate and to alter a classification where such was unreasonable;

(d) that in view of the facts, the part of the rate from Chicago and from the Mississippi River was unreasonable and should not exceed 20c. and 15c. respectively.

Order accordingly.

144.—Harvey v. Louisville & N. R. Co. 5 I. C. C. Rep. 153; 2 Int. Com. Rep. 662; 3 Int. Com. Rep. 793. (Feb. 12, 1892.)

Complaint of discrimination in passenger rates by giving passes to public officials.

Defendant had given passes to members of the New Orleans City Councils and to the clerk thereof.

Held, (Knapp, C.), that such was unlawful, favoritism to public officials being particularly odious and indefensible.

Order that defendant desist therefrom.

145.—Lincoln Creamery v. Union Pacific R. Co. 5 I. C. C. Rep. 156; 3 Int. Com. Rep. 641, 794. (Feb. 13, 1892.)

Complaint of unreasonable rates on butter from Lincoln, Kas., to Denver, Colo.

The rate complained of was \$1.25 per 100 pounds, and had been in force since complainant began business. Prior to that time it had been 10c. to 15c. higher. It was a blanket rate covering points some distance east of Lincoln. Complainant offered in evidence tariffs of eastern roads showing butter rates for distances equal to that in question of 55c. and 40c. The country between Lincoln and Denver was sparsely settled.

Held, (Knapp, C.), (a) that where, as here, there was no question of discrimination or preference involved, a comparison of rates elsewhere was of little assistance;

(b) that the burden on complainant of proving the rates in question to be unreasonable had not been overcome.

Complaint dismissed.

146.—Toledo Produce Exchange, et al. v. Lake Shore & M. S. R. Co. et al. 5 I. C. C. Rep. 166; 2 Int. Com. Rep. 492, 569; **Kemble v. Same.** 5 I. C. C. Rep. 166; 2 Int. Com. Rep. 720, 813; 3 id. 830. (Apr. 6, 1892.)

Complaint of unreasonable differential or arbitrary on 3rd to 6th class freight (especially flour) from points between Chicago and Buffalo in shipments to Boston over that from the same points to New York.

In the case of Boston Chamber of Com. v. Lake Shore & M. S., et al., (38). (1887), in which Kemble had been one of the complainant committee, it had been held that a differential of 10c. per 100 pounds on 1st and 2nd class freight and of 5c. on 3rd to 6th class was reasonable in favor of New York against Boston in shipments from Chicago and western points. Since that decision the differential on 3rd to 6th class had been reduced to 2½c. from Buffalo and points

east thereof, while from points west thereof, including Toledo, it remained at 5c. Flour was rated 6th class and since that decision rates from Chicago had shrunk from 50c. to 25c., so that a 5c. differential had become one of 20% instead of 10% as previously. The distance from Chicago to Boston was 110% of that to New York, by short line distance. At New York the roads paid 3c. per 100 pounds for lighterage and paid none at Boston. It was contended that this fact increased the differential to 8c. On hauls to New York the L. S. & M. S. received as its division of the through rate 2c. per 100 pounds less than for the same service on hauls to Boston. At the opening of the case, counsel for the complainants had offered to have the evidence in the prior case admitted as a whole in this case, but subsequently would not agree to allow this.

Held, (McDill, C.), (a) that the Commission was not a court and therefore Kemble was not estopped by record by reason of his being a party to the prior proceedings in which the differential was held to be proper, especially since he was there a party in a representative capacity and here as an individual;

(b) that in accordance with counsel's agreement at the opening of the case, the evidence in the prior proceedings was part of this case;

(c) that the public was not concerned with the division of the through rates among the carriers participating therein;

(d) that the lighterage charge was part of the regular expense of the haul and not to be reckoned as increasing the differential;

(e) that an arbitrary was not equitable since its burden increased with the decrease of the rate, but the Boston rate should properly exceed that to New York by a given per cent. which in this case should be 10%.

Order accordingly, unless within 20 days defendants show cause why such order should not be issued.

147.—*Rice v. Cincinnati, W. & B. R. Co., et al.* 5 I. C. C. Rep. 193; 3 Int. Com. Rep. 841. (Apr. 9, 1892.)

Complaint of unreasonable rates on oil and discrimination and preference of tank shippers to the Pacific Coast (Cases Nos. 184 and 185), and to Southern points (No. 194), of failure to furnish tank cars to complainant, and of violations of Sec. 4.

These cases (three being here disposed of at once) were begun in 1889 at the same time as that of *Rice v. A. T. & S. F. R. Co.*, (115). Since then the tank and barrel methods of shipment to the Pacific had been largely superseded by the method of shipping in cans enclosed in cases, 80% of the oil to the Pacific being thus shipped. It appeared that by the method in vogue of estimating weights on tanks and barrels, a discrimination was produced against barrelled oil, of from \$1.50 to \$13.30 per car. Tank shippers were also given an allowance of 42 gallons for leakage, while barrel shippers were allowed nothing, although their leakage was equally great. As re-

gards the shipments to the south (via the Louisville & Nashville) complained of in the third case, rates to intermediate points about half way to New Orleans (from Marietta, O.), were three times as great as that to New Orleans, and the rate system was so arranged that low rates were given to almost all points where there were stationary tanks (for unloading tank cars) owned by the Standard Oil Co., these being the basing point, and rates to intermediate points being made by combining rates to such points with the local rate to the destination. The Standard Oil Co. could thus ship to the tank station and out again to the local point as cheaply as complainant could ship through. Cotton seed oil was hauled north at rates considerably lower (35%) than those charged on petroleum for the same haul south, although cotton seed oil was four times as valuable as petroleum. The rate on liquor was lower than that on petroleum, although liquor was a much more valuable article. The defendants charged for the weight of the barrel but not for that of the tank.

Held, (Knapp, C.), reviewing previous decisions concerning oil rates (a) that no matter in what manner a discrimination was produced, if it resulted in an unreasonable preference it was illegal under the Act;

(b) that although a railroad was not bound to furnish shippers with any particular species of equipment, where it hired cars from certain large and powerful shippers it was its duty to see to it that no advantage resulted to such against their weaker competitors;

(c) that the method of estimating weights, here shown, produced an unjust discrimination against barrel shippers which should be remedied;

(d) that the same was true of the 42 gallons per car allowance in tank shipments, which was virtually a rebate to such shippers;

(e) that the lower rate on cotton seed oil did not produce a discrimination against petroleum shippers since the articles were not competitive, but tended to show that the petroleum rates were unreasonable;

(f) that although competition by water might justify a lower rate to New Orleans than to intermediate points, yet in view of all the facts the difference in rates was unreasonably great, but from the evidence the Commission was unable to find exactly what such difference should be;

(g) that the orders issued in previous cases requiring that no charge be made for the weight of barrel packages, where none was made for tanks, were not of universal application;

(h) that in view of the changed conditions of the traffic to the Pacific since the proceedings were commenced, and of the inconclusive evidence as regards rates to intermediate points on the L. & N., the other questions involved would be left open for further action by the parties.

Order accordingly.

148.—**Raworth v. Northern Pac. R. Co., et al.** 5 I. C. C. Rep. 234; 2 Int. Com. Rep. 614; 3 Int. Com. Rep. 857. (Apr. 13, 1892.)

Complaint of unreasonable sugar rates from San Francisco to Fargo, N. Dak., compared with that to St. Paul, a more distant point, of preference of St. Paul, and of violation of Sec. 4.

Fargo was 240 miles nearer San Francisco than St. Paul, on the same line. The sugar rate to St. Paul was 65c. while that to Fargo was 97c., this being the rate to St. Paul plus the local rate from St. Paul back to Fargo. The answer alleged that the circumstances and conditions of the two hauls were different, but did not set out the points of difference. At the hearing and argument the roads alleged as a justification of the rates, competition by water from the sugar fields in Hawaii, competition with the Canadian Pacific road, and market competition with New York sugar (the low price of sugar in New York plus the rate from New York to St. Paul forcing down the rate from San Francisco to St. Paul.) Rates to Fargo and St. Paul had been the same until shortly before the complaint. The Northern Pacific alleged that its charter gave it the right to fix its own rates, which right was not taken away by the Act.

Held, (Veazey, C.), (a) that the burden of justifying a *prima facie* violation of Sec. 4 was on the railroads;

(b) that controlling competition by water had not been proved;

(c) that insomuch as the Canadian Pacific road passed through Fargo en route to St. Paul, the competition of that road could not be a justification of the relation of rates in question;

(d) that the real and controlling reason for the rate relation was the commercial competition with the New York market, and, following *James and Mayer Buggy Co. v. C. N. O. & T. P.*, (132-A), such competition was not a valid justification;

(e) that even though the facts justified an exception to the rule of Sec. 4, there was here an unjust discrimination under Sec. 2;

(f) that in the charter of the Northern Pacific, Congress had reserved the right of alteration and amendment, which was exercised by the Act;

(g) that the rate to Fargo was not *per se* unreasonable, but was so in contrast to the rate to St. Paul, and should not be higher than the St. Paul rate;

(h) (semble) that insomuch as the facts on which a justification of the rates in question might have been based were within the peculiar knowledge of the defendants, they should have been fully set out in the answer, and an exception to the answer would have been sustained on this ground.

Order accordingly.

150-A.—**Oregon Short Line & U. N. R. Co. v. Northern Pac. R. Co.** 51 Fed. 465; 4 Int. Com. Rep. 249. C. C. D. Ore. (June 15, 1892.)

Bill to compel defendant to desist from alleged discrimination in favor of the Southern Pacific Co., in refusing to receive car-load freight from complainant, a connecting carrier, in complainant's cars, paying the usual car mileage, and in refusing to honor through passenger tickets issued by complainant, although such facilities were allowed the Southern Pacific Co., a rival line connecting with defendant.

Complainant attempted to prove a custom among railroads to allow such privileges, but failed. The answer denied that facilities were given to the Southern Pacific Company which were denied complainant.

Held, (Field, Cir. Just.), (a) that under the Act, especially in view of the proviso as regards "tracks and terminal facilities," defendant was not bound to allow complainant the facilities desired;

(b) that defendant was not required to do this by the 5th section of its charter.

Injunction dissolved.

Deady, J., dissented on both grounds.

150-B.—Oregon Short Line & U. N. R. Co. v. Northern Pac. R. Co.

61 Fed. 158; 4 Int. Com. Rep. 718; 9 C. C. A. 409; 15 U. S. App. 479. C. C. A., 9th Circuit. (Apr. 12, 1894.)

Appeal from foregoing.

The Court stated that the charge that facilities were given to the Southern Pac. Co., which were denied complainant, was not sustained by the evidence and might be dismissed from consideration. The case was treated by the Court as one of a discrimination against the points from which defendant would not accept through tickets or take the freight in complainant's cars.

Held, (McKenna, C. J.), (a) that the Act was not intended to and did not in fact provide for compelling connecting roads to enter into arrangements for through transportation;

(b) that no undue preference appeared.

Judgment affirmed.

151.—Eau Claire Board of Trade v. Chicago, M. & St. P., et al.

5 I. C. C. Rep. 264; 4 Int. Com. Rep. 65. (June 17, 1892.)

Complaint of preference to Winona and La Crosse, Wis., over Eau Claire, Wis., in rates on lumber.

Until May, 1884, the rival lumber producing towns near Eau Claire had had substantially equitable rates to Missouri and Mississippi River points, Eau Claire being subject to a differential against it of 2c. to 4c. At that date the rate war then in progress ended in the Bogue Award, by which rates to all points in this region were made a certain differential above the Chicago rate. This award fixed the Eau Claire lumber rate at 5½c. per 100 pounds higher than that from Winona and La Crosse, Eau Claire's two principal competi-

tors. The officials of the C. M. & S. P. admitted that there was no reason for a substantial difference in rates among these three towns, except that Eau Claire was nearer the forests, and from its better situation was able to pay a higher rate. Since the Bogue Award the trade and population of Eau Claire had fallen off greatly and many of its mills had been closed while Winona and La Crosse had correspondingly prospered, although up to the time of the award Eau Claire had been rapidly growing. The avowed object of the award was to equalize geographical disadvantages. The Chicago, M. & St. P. was willing to reduce the Eau Claire rate, but stated that if it did so roads leading from Winona and La Crosse, which did not serve Eau Claire, would reduce their rates so as to preserve the existing differential, since they wished to build up Winona and La Crosse. Eau Claire was 20 to 50 miles more distant from the markets than its two rivals.

Held, (Knapp, C.), (a) that in fixing a proper rate and rate relation between localities, distance was an important consideration but by no means the only controlling one, especially where the distances were great and the relative distances greatly dissimilar;

(b) that competing towns in the same group should have substantially the same rates;

(c) that the principle of equalizing natural advantages by rate differentials, was wholly unsound, since every place was entitled to the fruits of such advantages, and that in the present case the award had more than equalized such advantages;

(d) that in so much as the roads running from Winona and La Crosse did not serve Eau Claire (such roads having been made parties at the request of C. M. & S. P.), they could not be said to have part in a discrimination against Eau Claire, and no order would be made against them, although they would not have the right to nullify the order of the Commission by reducing rates from Winona and La Crosse;

(e) that under the facts there was an unjust discrimination against Eau Claire in favor of Winona and La Crosse, and the differential should be not greater than 2c. on an 11c. rate and 2½c. on a 16c. rate.

Order accordingly.

152-A.—Oregon Short Line & U. N. R. Co. v. Ilwaco R. & Nav. Co.
51 Fed. 611. C. C. D. Wash. W. D. (Aug. 27, 1892.)

Bill for injunction to require defendant to allow complainant's steamboats to receive and discharge passengers at its wharf.

Defendant operated a railroad and a line of steamers between Astoria, Ore., and Shoal Water Bay, Wash. At Ilwaco it had a wharf where steamer and railroad connected. This, it contended, was a private wharf, while complainant claimed that it was a public one. It refused to allow complainant's steamers to land there, there being insufficient space for both.

Held, (Hanford, D. J.), that the injunction should be granted.

152-B.—Ilwaco R. & Nav. Co. v. Oregon Short Line & U. N. R. Co.
57 Fed. 673; 5 Int. Com. Rep. 627; 6 C. C. A. Rep. 495; 15
U. S. App. Rep. 173. C. C. A., 9th Circuit. (July 17,
1893.)

Appeal by defendant from foregoings.

Held, (McKenna, C. J.), (a) that Sec. 3 of the Act contemplates independent carriers besides the offending railroad, capable of mutual relations, and capable of being objects of favor or prejudice, and for a carrier to prefer itself in its own proper business is not the discrimination which is condemned;

(b) (semble) that the wharf was a private one.

Judgment reversed.

153.—Anthony Salt Co., et al v. Missouri Pac., et al. 5 I. C. C.
Rep. 299; 3 Int. Com. Rep. 679; 4 Int. Com. Rep. 33. (Apr.
23, 1892.)

Complaint of unreasonable rates on salt from Kansas salt fields to points between Kansas and Michigan, and to points in Texas, as compared with those from Michigan salt fields, and preference of the latter thereby.

The west-bound rates on salt from Michigan to points between Michigan and Kansas was considerably lower than the east-bound rates from Kansas for the corresponding distance, but these west-bound rates had been fixed prior to the discovery of the salt fields in Kansas. There were more empty cars west-bound than east, and cars from Kansas could easily be filled with better paying freight than salt. Kansas was much more sparsely settled than Michigan. The Michigan salt could be prepared for market somewhat more cheaply than that from Kansas. The same roads did not serve the intermediate points between Kansas and Michigan from both fields, so that an order on defendants to reduce the rate from Kansas points could be rendered ineffectual by a reduction by roads from Michigan points who were not parties. As to rates to Texas points, the above considerations did not apply and to such points the Michigan fields were more distant than those in Kansas. The Atchison, Topeka and Santa Fe, and lines controlled or leased by it, ran to Texas, both from the Michigan and Kansas fields, but the other defendants did not serve both fields.

Held, (McDill, C.), (a) that as to rates to points between Michigan and Kansas, although the continued reduction of relative rates like that which would result from a reduction of those from Kansas would not be undesirable when brought about by the removal of artificial and unnatural preferences, yet such continuing disturbance of rates ought not to be inaugurated where the preference is the result of natural and real advantages enjoyed by the favored region;

(b) that, in view of the facts, the relative rates to such points were reasonable;

(c) that as to the rates to Texas over the lines of the A., T. & S. F., and leased roads, there was an undue preference of Michigan salt fields and rates from Kansas should be reduced to figures named.

Order accordingly.

154-A.—Trammell, et al. v. Clyde S. S. Co., et al. 5 I. C. C. Rep. 324; 4 Int. Com. Rep. 120, 121. (Nov. 11, 1892.)

Complaint of rates from Cincinnati and other Ohio points, and from New York and Atlantic ports, to points in Georgia, as unreasonable, discriminative, and in violation of Sec. 4.

Rates to Atlanta, Georgia, were less than to intermediate points. Defendants alleged, as justifying the rates in question, competition by rail, by water, and by different markets, and also the fact that the rates to intermediate points were made up of the sum of the through rates to the nearest basing point plus the local rate therefrom, there being no through rates to intermediate points. Traffic to such points went through and on through bills of lading. Subsequent to filing the complaint, one defendant went into the hands of a receiver.

Held, (Veazey, C.), (a) that complainants, the members of the Georgia Railroad Commission, were proper parties complainant;

(b) that the receiver of a railroad was a common carrier subject to the Act;

(c) that where several carriers successively received freight transported under through bills of lading, for continuous carriage over their lines, it constituted a common arrangement, making them subject, as to such traffic, to the Act, without any previous formal arrangement, and that no matter how the rate for such shipment was made up, it should comply, as a total rate, with the provisions of the Act;

(d) that although in the case of *Re Louisville & Nashville R. R.*, (13), the Commission held that in certain cases a railroad might be justified in making an exception to Sec. 4, on its own responsibility, by reason of the competition of railroads subject to the Act, this decision was now modified, and although in case of competition by water lines, or of roads not subject to the Act, or of substantial dissimilarity of conditions on the line of a road, such road was justified in making an exception to Sec. 4 on its own responsibility, such was not the case as regards the competition of markets or of roads subject to the Act, and in such cases relief from the provisions of Sec. 4 could be obtained only by application to the Commission; (see concise statement of the rule, pp. 397 and 403.)

(e) that the decisions under the English statute were valuable in determining questions of undue preference or discrimination, but

were not of value in reference to questions arising under Sec. 4, there being no similar provision in the English statute;

Complaint dismissed in a number of cases where the shorter was not shown to have been included in the longer haul, and in other cases order entered that the roads comply with Sec. 4, with leave to apply for relief within 60 days.

154-B.—Interstate Commerce Commission v. Western & A. R. R. Co., and Clyde S. S. Co., et al. 88 Fed. 186. C. C. N. D. Ga. (June 15, 1898.)

Proceeding to enforce order of the Commission issued in above, forbidding less charge from Cincinnati, New York and other eastern cities to Atlanta, Ga., than to nearer points on the same line.

The Commission had ruled that the present adjustment of rates at Atlanta was the outcome of competition between lines leading from competing markets, and that the same competition did not exist at the shorter distant points. The rates to the latter points were made up of the sum of the rates to the competing points, plus the local rates back to the non-competing point. The Commission held that the competition in question, although perhaps sufficient to justify an order by the Commission granting relief from Sec. 4, did not justify the exception by the railroads of their own motion.

Held, (Newman, D. J.), (a) that the Courts would not attempt to deprive localities of their natural advantages, whether these resulted from geographical location or from the present competitive conditions;

(b) that where the conditions at the two points were substantially dissimilar the fact that a preference was created did not render the relation illegal;

(c) that the second section of the Act was not applicable as it dealt with preference between shippers and not between localities;

(d) that there was nothing in the record to show that the rates were in themselves unreasonable;

(e) that the conditions justified the rate relation in question.

The foregoing ruling was affirmed by the Circuit Court of Appeals for the 5th Circuit. Judge McCormick delivered the opinion, 93 Fed. 83 (1899), adding nothing to the foregoing.

On appeal to the Supreme Court of the United States the decree of the C. C. A. was modified so as to provide that the dismissal of the bills should be without prejudice to the right of the Commission to make an original investigation of the questions involved and proceed further. 181 U. S. 29. The Court did not discuss the case at length, simply following the ruling in *East Tenn., V. & G. R. Co. v. I. C. C.*, 181 U. S. 1. (162-D.)

155-A.—Independent Refiners Ass'n. of Titusville, etc. v. Western N. Y. & P. R. Co., et al. 5 I. C. C. Rep. 415; 2 Int. Com. Rep. 294, 296; 4 Int. Com. Rep. 162. (Nov. 14, 1892.)

Complaint of unreasonable rates on oil from Pennsylvania wells to New York and Boston, of the relative unreasonableness of rates to Boston, and of discrimination in favor of tank over barrel shippers.

Up to September, 1888, the tank and barrel rate on oil had been the same, 52c. per barrel, but at that date a new rule went into effect by which the weight of the barrel was included in estimating the weight of the freight, this raising the rate per barrel to 66c., while oil in tanks was still carried for 52c. per barrel. The shipper could not sell his empty barrels at New York or Boston at a profit. The amount of paying freight carried by the tank method was considerably greater than by barrel. Tank shipments were also easier for the railroads to handle, since the Standard Oil Co., practically the only user of tank cars, had special facilities for loading and unloading. There was great fire risk in transporting oil and scarcely any back loading for either tank cars or those which had carried barrelled oil. The Standard Oil Co. owned almost all the tank cars in service, and the Penna. R. R., which owned some, allowed them to go only to Communipaw, N. J., near where the Standard Oil Co. had its special terminal facilities. This road had a pooling agreement with the National Transit (Pipe Line) Co. The rate per 100 pounds to New York was 16½c. and to Boston 23½c. There was evidence that the railroads had co-operated to raise the selling price of oil at the wells. Complaint was also made of certain incorrect publication of tariffs, of the withdrawal of certain through rates and of a practice at certain points of estimating the weight of oil inaccurately.

Held, (McDill, C.), (a) that a railroad was bound to furnish the same service to all shippers, or where the same service was not available to all, to see to it that no shipper was prejudiced thereby;

(b) that a barrel in which oil was transported was not an article of merchandise and in the present case no charge should be made for it, although the case here depended on its peculiar facts;

(c) that the fact that the railroads received a greater return on tank shipments than on barrel, did not justify the difference in rates since the two methods of shipment were not equally accessible to all shippers;

(d) that if the weight of the barrel were excluded the rates to New York and Boston were not unreasonable, nor was their relation unfair to Boston;

(e) that Sec. 5 of the Act applied only to pooling by railroads and not to that by a railroad and a Pipe Line Company;

(f) that the Commission had no power to prevent the railroads from forcing up the price of oil at the wells;

(g) that since the errors in publication of rates complained of had not been wilful and had injured no one, no action would be taken with regard thereto;

(h) that the Commission had no power to order railroads to restore through rates;

(i) that the practice of making false and incorrect estimates of weights was illegal, and should be corrected;

(j) (semble) that where a railroad did not itself own sufficient tank cars to supply all shippers, private tank cars must be pro rated among all and that their use could not be restricted to the owners thereof.

Order accordingly and case left open for complainants to have opportunity to prove damages.

155-B.—Independent Refiners Ass'n. of Titusville, et al. v. Pennsylvania R. R. Co., et al. 6 I. C. C. Rep. 52; 4 Int. Com. Rep. 162, 369. (Oct. 19, 1893.)

Petition by Penna. R. R. that the Commission modify its opinion and findings in foregoing case in certain particulars.

The finding complained of was that in which the Commission stated that the P. R. R. Co., although professing to furnish its 450 tank cars equally to all shippers, really restricted them to the Standard Oil Co., by its rule allowing them to go only to Communipaw, N. J., near where the Standard had its unloading facilities. The railroad asked leave to offer evidence to show that it was entirely impartial in its allotment of these cars.

Held, (By the Commission), (a) that although the Commission had no power to force this railroad to allow the cars to go to other points than Communipaw, since it had no through routes to such other points, yet the Commission could order it to cease discriminating in this or any other way in favor of the Standard Oil Co., or else suffer the penalty provided by the Act;

(b) that although the proper method of procedure was for this road to have offered its evidence at the original hearing, nevertheless since by affidavit it had made out a *prima facie* case as to the incorrectness of the charge against it on the record, it was entitled to an opportunity to correct this charge.

See also same case after hearing, 6 I. C. C. Rep. 449 (1895.)

155-C.—Independent Refiners Ass'n. of Titusville, etc. v. Western N. Y. & P. R. Co., et al. 6 I. C. C. Rep. 378; 4 Int. Com. Rep. 162, (1895.)

Claim for reparation for discrimination and preference of tank over barrel oil shippers.

After the issuance of the Commission's order of Nov. 14, 1892, directing defendants either to provide tank cars for all shippers or else transport barrelled oil without charging for the weight of the barrel, the railroads took no action toward compliance with the order. Certain of the complainants filed claims, after various delays, which were submitted to defendants. These claims were for amounts charged on the weight of the barrels shipped at 14c. per

barrel to New York, and 20c. to Boston. All the roads participating in certain of the hauls as to which complaint was made, were not parties to the proceedings. One of the defendants was in the hands of a receiver, and the road of another had been leased for part of the period complained of.

Held, (By the Commission), (a) that irrespective of the manner in which the system of charge arose there was a clear case of undue discrimination against barrel shippers;

(b) that every road a party to a through haul was responsible for all damage suffered throughout the haul, and for having proper facilities furnished throughout the entire haul, although it received only a part of the rate;

(c) that a receiver was a common carrier, subject to the Act;

(d) that a lessor railroad was responsible for violation of the Act by its lessee during the lease;

(e) that damages be awarded in the amounts proved.

Order accordingly.

See also 6 I. C. C. Rep. 449, and (199.)

155-D.—Interstate Commerce Commission v. Western N. Y. & P. R. Co., et al. 82 Fed. 192. C. C. W. D. Pa. (July 3, 1897.)

Demurrers to petition to enforce orders of Commission issued in above, requiring defendants to cease from certain discriminations in oil shipments from Western Pennsylvania to New York and Boston, and to make reparation to shippers as ordered.

Defendants had a common arrangement for continuous carriage between the points specified. Two of them had been transferred to other companies subsequent to the order of the Commission. They contended that they were not proper parties to the proceedings.

Held, (Acheson, C. J.), (a) that each and all the defendants were responsible for the violation of the Act in the district where the shipment started, the violation of one being that of all;

(b) that the transferees of the two roads were bound by the order against their assignors and were properly joined as defendants;

(c) that a court of equity had no jurisdiction to enforce a reparation order, defendant being entitled to a jury trial, but as the order was separable the proper parts of the order might be enforced;

Demurrers sustained as respects the order for reparation, but in other respects overruled.

155-E.—Western N. Y. & P. R. Co., et al. v. Penn Refining Co. 137 Fed. 343. C. C. A., 3rd Cir. (May 1, 1905.)

Writ of error to C. C. W. D. Pa. from judgments on two verdicts for damages suffered by the exaction of unreasonable rates on oil shipments in barrels from Oil City and Titusville, and preference of tank shippers, such verdicts having been rendered at trials held subsequent to investigation and award of reparation by the Commission.

Errors were alleged: (1) to the admission in evidence of a paragraph from the report of the Commission containing a statement that a charge for the barrel package and not for the tank was undue discrimination, in view of the facts;

(2) to a part of the charge stating that the jury might pass on the questions before them without reference to the orders of the Commission, (appellant contending that no reparation could be included in the verdict which was not included in the order of the Commission.)

(3) to the refusal by the Court below to dismiss the suit as to the Lehigh Valley R. Co., which had leased its road during a portion of the period covered by the complaint;

(4) to the refusal to dismiss the suit as regards the receivers of the W. N. Y. & P. R. Co., the receivers having taken charge during the period in which the charges complained of were exacted;

(5) to the refusal to dismiss the suit as regards the Erie R. Co. which purchased the property of one of the roads which had exacted the charges complained of;

(6) to the refusal to dismiss the suit as to the two receivers of the N. Y., L. E. & W. R. Co. who had been formally discharged some four years prior to the bringing of the action in the Court below, the order discharging them never having been vacated or application for that purpose made.

Held, (Bradford, D. J.), (a) that although perhaps the findings of fact by the Commission were not to be excluded because they were mixed with incompetent matter, such as expression of legal opinion and argument, in presenting such to the jury the Court should clearly distinguish between the findings of fact and the incompetent matter, and as the portion of the Commission report in question consisted almost wholly of mere legal conclusions and was argumentative, to submit it to the jury as a finding of fact was error;

(b) that the findings of fact by the Commission should be so arranged that they could be offered as *prima facie* evidence of each and every fact found unaccompanied by extraneous, embarrassing or incompetent matter calculated to confuse or mislead the jury;

(c) that although the validity of the Commission's orders did not depend on the reasons given or the facts found by them but on the actual facts appearing before the Court or jury, yet in questions of reparation, since the Act required the complainant to elect between a proceeding before the Court in the first instance or before the Commission, no verdict could be rendered in an action for the disobedience of an order of reparation by the Commission of damages not included in such order, and the portion of the charge in question was, therefore, erroneous;

(d) that the L. V. R. Co. was not responsible for discriminating rates exacted by the Reading while lessee of its road, and as the amount of the charges during such period was not separated from

the general damages, the whole order on which the judgment was based was unlawful;

(e) that as an execution on a judgment against a receiver could not be enforced or legally issue against the property in custodia legis, the receivers of the W. N. Y. & P. R. Co. had been improperly joined as parties;

(f) that the Erie R. Co. was not responsible for the illegal charges of its vendor and should not have been joined as a party;

(g) that the jury should have been instructed to render a verdict for the receivers of the N. Y., L. E. & W. R. Co.;

(h) that in an action of this kind the question as to whether a given rate was just and reasonable or unreasonable and excessive, was peculiarly a question for the jury and it was proper for the Court to refuse to give instructions with reference to the lawfulness or unlawfulness of the barrel package charges complained of.

Judgments reversed absolutely, with costs.

155-F.—Penn Refining Co. v. Western N. Y. & P. R. Co. 208 U. S. 208. Error to C. C. A., 3rd Circuit. (Jan. 27, 1908.)

Appeal from foregoing order reversing judgment for plaintiff absolutely and without venire.

According to the statement of facts in the Supreme Court report, the original cause of complaint before the Commission had been the unreasonableness of the 66c. per bbl. rate, the weight of the barrel being included, but was not based on the fact that a charge was made for the barrel, nor was there any averment of a preference to tank shippers. There were no facilities for tank shipments at Perth Amboy where plaintiffs consigned their oil for export, nor had they ever made a demand for tank cars, and those who owned such cars did not use them at Perth Amboy as the oil would have to be loaded into barrels before transshipment to vessels. The Lehigh Valley R. Co. owned no tank cars and was not the initial carrier, but concurred in the joint through rate. The Commission ordered a cessation of the 14c. charge for the weight of the barrel when the use of tank cars was not open to the use of shippers impartially, and awarded damages on this basis.

Held, (Peckham, J.), (a) that the permission to charge for the weight of the barrel where the tank cars were open to all who wanted them, amounted to a finding that this charge was not *per se* excessive, and resolved the case into one of discrimination;

(b) that since it did not appear that the plaintiff had ever had any use for tank cars or demanded them, and since it did appear that transportation by tank cars was more remunerative to the railroads than that in barrel packages, there was no undue preference or discrimination;

(c) that in any event the Lehigh Valley R. Co., a mere connecting carrier, was not responsible for any wrongful act of discrimination

of the initial carrier in not furnishing tank cars to shippers impartially;

(d) not decided as to whether recovery for discrimination was precluded by reason of the fact that the original complaint was based on unreasonableness of rates on oil; nor as to duty to furnish tank cars to all demanding them where it accepted those owned by other shippers.

Judgment affirmed.

Moody, J., and Harlan, J., dissented, on the ground that there was evidence of undue preference proper for the jury.

156-A.—Alleged Unlawful Charges for Transportation of Coal by Louisville & N. R. Co. 5 I. C. C. Rep. 466. (Nov. 17, 1892.)

Investigation, on informal complaint, of alleged unreasonable coal rates from certain coal fields to Nashville, Tenn., compared to those to Memphis, Tenn., of preference of Memphis thereby, and of discrimination in favor of certain dealers and manufacturers by means of rebates.

Defendant had used a system by which the same rate was charged to all dealers, but a certain part was returned upon the giving of a certificate stating that the dealer had sold to one or more of a certain number of persons listed as manufacturers. The list omitted many manufacturers and included some who were not manufacturers. (This practice was discontinued during the investigation.) The Memphis rate was \$1.40 on all coal the year round, but after the above practice was abandoned, the rate to Nashville on nut and slack coal was \$1.00 and on screened coal \$1.15 from April 1st to September 1st, and \$1.40 for the rest of the year. The distance from the mines to Nashville was 100 miles and to Memphis, 260 miles. There was competition at Memphis and the defendant was itself a coal dealer at that point.

Held, (McDill, C.), (a) that the former practice was clearly illegal and would have been stopped by the Commission had it continued;

(b) that the Memphis rate was not unreasonably low in itself as it was profitable to the defendant;

(c) that a higher rate on screened coal than on nut and slack was proper and that the rates of \$1.00 and \$1.15 per ton respectively were reasonable, both in themselves and in relation to the Memphis rate;

(d) that the practice of making different charges on screened coal at different times of the year was unreasonable and this rate should remain the same or the same ratio to the Memphis rate.

Order accordingly.

156-B.—Interstate Commerce Commission v. Louisville & N. R. Co. 73 Fed. 409; 5 Int. Com. Rep. 656. C. C. M. D. Tenn. (Apr. 17, 1896.)

Petition to enforce order issued in above, requiring defendant to desist from charging more than \$1.15 per ton on certain kinds of coal from certain mines to Nashville, Tenn., so long as the rate to Memphis was not greater than \$1.40 per ton.

Defendant's rate on the coal in question to Nashville was \$1.15 during the summer, but during the winter it was \$1.40, and this latter rate was complained of as unreasonable and as giving an undue preference to Memphis, the latter being a point considerably more distant from the mines than Nashville.

Held, (Clark, D. J.), (a) that although the Court might go into all the evidence before the Commission or before it to determine if the order of the Commission was a lawful one, it had no power under the Act but to enforce the order in whole or in part and might not change or modify it;

(b) that although the function of the Commission was both quasi judicial and administrative in its nature, a proceeding before it was not a judicial one;

(c) that the report of the Commission should not be made up of mere conclusions, but a sufficient summary of the evidence should be given to enable the Court to judge how such conclusions were arrived at;

(d) that the order in question indicated that the Commission had not passed on whether or not the rate to Nashville was reasonable *per se*;

(e) that the influence of competition in fixing or affecting a given rate or relation of rates was a question of fact, but the question as to whether competition was a proper consideration in fixing or passing on the reasonableness of rates was a question of law;

(f) that the interest of the seller or consignor, the carrier, and of the consignee or consumer, were all to be considered;

(g) that mileage distance was not the sole consideration in fixing relative rates;

(h) that competition was an important consideration in fixing such rates;

(i) that a carrier was justified in charging higher rates in winter, when its cars were busy, than in summer, when they were idle;

(j) that the Commission might alter its order even after its approval by the Court;

(k) that the Commission had no power to fix rates either absolutely or relatively;

(l) that questions of discrimination and preference must be treated broadly and practically, and not by any process of mathematical or arithmetical calculation.

Bill dismissed.

157.—**Merchants' Union of Spokane Falls v. Northern Pac. & Union Pac. R. Co.** 5 I. C. C. Rep. 478; 2 Int. Com. Rep. 452; 4 Int. Com. Rep. 183. (Nov. 28, 1892.)

Complaint of unreasonable rates to Spokane, Wash., from St. Paul, Minn., and eastern points, of preference of Tacoma, Seattle, and Portland, and of violation of Sec. 4.

From St. Paul to Spokane was 1512 miles, and to Tacoma, Seattle, and Portland about 2050. Spokane was a growing city, situated between two mountain ranges, the Cascades on the west having very steep grades, which it was necessary to cross in order to get to the Pacific. Rates to Portland from St. Paul were but 3-5 those to Spokane, although the distance was one-third greater, and Portland jobbers could undersell those at Spokane almost as far east as Spokane. The blanket class rates to the coast extended east to a point 40 miles east of Spokane, but almost all the traffic to Pacific coast points went at special low commodity rates of which there were about 50 printed pages, while to Spokane there were but two or three pages of such special rates. The rate from St. Paul increased very much faster per mile from Missoula (250 miles east of Spokane) to Spokane than during any other part of the haul to the coast, the rate per ton mile to Spokane being higher than to Missoula. The commodity rates to the coast yielded a profit over the cost of transportation, but not over the total proportion of expenses of the road so that if all traffic were hauled at such rates the roads would run at a loss. There was a great deal of traffic by water at very low rates to the Pacific coast, and the Canadian Pacific road was also a competitor, but many of the articles having special commodity rates could not go by water. Spokane did not have carload rates on certain commodities and was also denied certain other privileges allowed to the western termini, but this the defendants agreed to remedy. The Northern Pacific road alleged that its charter protected it from interference by the Commission with its rates.

Held, (Knapp, C.), (a) that the competition by sea and by the Canadian Pacific justified an exception to Sec. 4, but in spite of this the rates to Spokane were unreasonable under the first three sections of the Act;

(b) that as to the refusal to allow carloads rates while allowing them to western points, there was no justification for the discrimination;

(c) that as to articles not affected by water competition there was no justification for the lower rate to the coast;

(d) that a blanket rate extending over a distance of 600 miles was here an undue discrimination against the near points;

(e) that in view of the low rates to the coast on the last two classes of goods, of the difficult haul over the Cascade Mountains, and of the rapid increase in the rate for the 250 miles east of Spokane, rates on the latter were unreasonable to the extent of 18%, and should not materially exceed 82% of the class rate to the coast;

(f) that the charter of the Northern Pacific road did not preclude the Commission from dealing with the rates charged by it.

Order accordingly.

158.—**United States v. Mellen, et al.** 53 Fed. 229; 4 Int. Com. Rep. 247. D. C. D. Kas. (Nov. 28, 1892.)

Motion to quash indictment against certain railroad employees for violation of Sec. 4.

It was alleged that the Union Pac. R. Co., and the Southern Pac. R. Co., had a joint rate on corn from San Francisco to Kansas City, Mo., of 65c. per 100 pounds, and that from San Francisco to Salina, Kas., a nearer point on the same line by 186 miles, they charged 94c. It was not alleged that the rate to Salina was a joint rate. Barr, one of the persons indicted, was merely the agent who collected and received the rates, having nothing to do with fixing them.

Held, (Riner, D. J.), (a) that under the decision in *Ry. Co. v. Osborne* (138-C), the charge of a through rate to a more distant point less than a local rate to an intermediate point did not constitute a violation of Sec. 4, unless the rate to the intermediate point was also a joint rate between the same carriers;

(b) that in the absence of an allegation that the rate to Salina was a joint rate, it would be presumed to be merely the sum of the local rates of the two roads;

(c) that in the third count, where the rate to Kansas City, which was greater than that to Salina, was not alleged to be a joint rate, the motion to quash would be overruled;

(d) that defendant Barr was not responsible for the rates in question.

Order accordingly.

159-A.—**Re Interstate Commerce Commission.** 53 Fed. 476, 481; 4 Int. Com. Rep. 315, 318. C. C. N. D. Ill. (Dec. 7, 1892.)

Application for order requiring certain railroad officials to answer questions, in an investigation before the Commission as to the ownership of the stock or controlling interest in certain railroads alleged to be a device for favoring a corporation controlling them, by means of a division of joint tariffs.

Held, (Gresham, C. J.), that the Federal Courts had not authority to issue its process in aid of an investigation of an administrative body such as the Commission.

Application dismissed.

159-B.—**Interstate Commerce Commission v. Brimson.** 154 U. S. 447; 4 Int. Com. Rep. 545; 14 S. Ct. Rep. 1125. Appeal from C. C. N. D. Ill. (May 26, 1894.)

Held, (Harlan, J.), (a) that Sec. 12 of the Act, giving the Circuit Courts power to use their process in aid of inquiries before the Commission under that Act was not unconstitutional as imposing on Courts duties non-judicial in their nature, since a petition by the Commission to compel a witness to testify was a "case" or "controversy" to which, under the Constitution, the judicial power of the Federal Courts extended;

(b) that the power to compel witnesses to testify before the Commission being essential to proper exercise of the power of Congress to regulate commerce under the Act, the method there prescribed was more direct and effective than by making it a crime to refuse to answer questions put by the Commission, or subjecting one refusing to a penalty;

(c) that one refusing to obey an order of the Commission would not be guilty of contempt, as this could only result after the issue of an order of the Court;

(d) that this was not a case in which respondent was entitled to a trial by jury.

Judgment reversed and case remanded.

160.—Potter Manufacturing Co. v. Chicago & G. T. R. Co., et al.
5 I. C. C. Rep. 514; 4 Int. Com. Rep. 223. (Dec. 9, 1892.)

Complaint of preference of eastern manufacturers of bed room sets by the same rates from Michigan to California on finished sets as on unfinished ones.

Complainant manufactured bed-room sets, which were partly finished at Lansing, Mich., and shipped knocked-down to its other factory at Emory, Cal., where they were finished. Complainant had organized its business in this way on the faith of assurances by the railroads of the maintenance of a substantial differential in favor of unfinished sets. Until 1891 the rate on finished sets (both expensive and cheap varieties) was \$2.75 per 100 pounds, and on unfinished sets \$1.35. Subsequently that on both finished and unfinished was reduced to \$1.30, this being done to encourage eastern manufacturers and to shut up the Pacific coast factories and so increase the railroad traffic. Unfinished sets paid more total freight per car, by reason of heavier loading capacity, and finished sets were 50% more valuable.

Held, (Clements, C.), (a) that the investment of capital by complainant on the faith of assurances by the roads of the maintenance of a given rate relation was no justification of that relation, if it was an improper one;

(b) that articles capable of heavier loading and of less value should receive a less rate;

(c) that roads were not justified in putting a worse situated locality on a commercial equality with one better situated; nor in depriving a shipper of the legitimate advantages derived from the enterprise and outlay necessary to utilize a just relation of rates;

(d) that the fact that the same rate applied to expensive sets as to cheap ones, did not justify an unreasonable rate on cheap sets by reason of the average rate on all being reasonable;

(e) that the rate on unfinished sets should not exceed 85% of that charged on finished ones.

Order accordingly.

161.—**Loud v. South Carolina R. Co., et al.** 5 I. C. C. Rep. 529; 2 Int. Com. Rep. 732, 768; 4 Int. Com. Rep. 205. (Dec. 24, 1892.)

Complaint of unreasonable rates on melons from South Carolina points to Washington, Philadelphia and New York, and of defective service, and demand for reparation.

The real gist of this complaint consisted in defendant's failure to run its trains on the fast schedule time advertised, resulting in complainant's melons reaching destination too late for the market and in a spoiled condition. There was evidence as to the cost of raising and shipping melons, but this was not of a very satisfactory nature. There was also complaint of failure properly to post rates. The rates in question had recently been reduced. Since the proceedings were instituted, one of the defendants had gone into the hands of a receiver who contended that the property in his hands should not be charged with the damages claimed.

Held, (Clements, C.), (a) that the question as to the liability of the receiver should properly be raised in a case of this kind, when the case went to the Courts on an order for reparation;

(b) that although rates should bear a fair relation to the commercial value and antecedent cost of the commodity shipped, such costs, etc., must be clearly proved in order to be of weight, and the question as to whether the rates afforded to the carrier a fair return for the service, was to be considered as well as the result to the shipper's business;

(c) that the question of defendants' liability for bad service was for the Courts and not for the Commission;

(d) that there was no satisfactory evidence of any willful neglect to post rates;

(e) that a reduction in rates by a railroad was not *per se* evidence that the former rate was unreasonable;

(f) that in view of the recent reduction of the rates they did not appear to be unreasonable.

Complaint dismissed.

162-A.—**Chattanooga Board of Trade v. East Tenn., V. & Ga. R. Co., et al.** 5 I. C. C. Rep. 546; 2 Int. Com. Rep. 798; 3 Int. Com. Rep. 106; 4 Int. Com. Rep. 213. (Dec. 30, 1892.)

Complaint of unreasonable rates to Chattanooga from New York and eastern points, of preference of Nashville and Memphis, more distant points, and violation of Sec. 4.

From New York to Chattanooga was 901 miles, and from Chattanooga to Nashville and Memphis, 151 miles and 310 miles. First class rates to the three points were respectively \$1.14, 91c. and \$1.00, and 4th class, 75c., 41c., and 45c. There was water competition at Memphis, but none at Nashville, under existing rail rates. At Nashville, however, there was strong rail competition. Defendants made some profit

on their Nashville and Memphis traffic, but how much did not appear.

Held, (Knapp, C.), (a) that the lower rates to Memphis were justified by reason of the water competition;

(b) that those to Nashville were not, since if the lines through Chattanooga were excluded from the Nashville business it would not go by water;

(c) (semble) that either the Chattanooga rate must be unreasonable or the Nashville rate unremunerative.

Order accordingly; leave to apply for relief within 60 days.

162-B.—Interstate Commerce Commission v. East Tennessee, V. & Ga. R. R. Co., et al. 85 Fed. 107. C. C. E. D. Tenn, S. D. (Feb. 2, 1898.)

Petition by the Commission to enforce its order in above, forbidding higher rates from the north and east to Chattanooga than to Nashville, a more distant point on the same line.

The Nashville rates were the result of competition at that point.

Held, (Severns, D. J.), (a) that the Act made the findings of fact by the Commission only *prima facie* evidence, and the Court might take further evidence and enforce the order issued if it appeared to be a lawful one, on the facts as they appeared to the Court;

(b) that it was not lawful for competing carriers charging an unremunerating rate at the greater distant point, to make up their losses of profit by higher charges at the shorter distant points, where competition was suppressed or impossible;

(c) that although competition was one of the considerations entering into a determination of the question of dissimilarity of conditions under Sec. 4, yet the further question always was present as to whether the dissimilarity was so great as to justify the discrimination complained of;

(d) that in the present case, although dissimilarity existed, it did not justify the discrimination and preference here appearing;

(e) that the question whether rates were just and reasonable in themselves was in some measure a relative one and properly tested by comparison with rates accepted elsewhere for similar service;

(f) that the ultimate power of determining the right and justice of discriminating rates rested with the Court;

(g) that neither the Commission nor the Court had the power to fix rates, the Court being restricted to an order enjoining the continuance of an unlawful practice.

Order issued forbidding a charge of the greater rate to Chattanooga than to Nashville.

162-C.—East Tennessee, V. & G. Ry. Co., et al. v. Interstate Commerce Commission. 99 Fed. 52. C. C. A., 6th Cir. (1899.)

Appeal from decree of the C. C. E. D. of Tenn., affirming and enforcing the order of the Commission issued in above, requiring

defendants to cease the preference of Nashville over Chattanooga in rates from northeastern points by lower rates to Nashville than to Chattanooga, a less distant point upon the same line.

The complaint before the Commission had included the rates to Memphis, as discriminating against Chattanooga. Chattanooga rates were from 25% to 60% higher on different classes of freight than those to Nashville and Memphis, although these points were 151 and 310 miles respectively more distant than Chattanooga. The Commission had found that at Memphis substantial water competition existed, justifying the lower rates. It appeared that at Chattanooga all the roads which were alleged to be competing at Nashville had termini, except the Louisville & Nashville, and this road controlled a majority of the stock in the Nashville, Chattanooga & St. Louis Railroad Company, which controlled a line running into Chattanooga. At Nashville it was alleged that there was potential water competition, but it appeared that the rates to Nashville could be raised to equal those to Chattanooga without the water competition taking away any of the traffic.

Held, (Taft, C. J.), (a) that the evidence did not sustain the contention that the water competition at Nashville had any influence upon the present rates to that point;

(b) that although effective and actual competition of all kinds justified a preference or an exception to Sec. 4, it was not in accord with the spirit or letter of the Act to recognize as a condition justifying discrimination against one locality, competition at a more distant locality, when competition at the nearer point was stifled or reduced, not merely by restrictions, but by an agreement between those who would otherwise be competing carriers;

(c) that there was no dissimilarity in the competition between Nashville and Chattanooga, insomuch as the Louisville & Nashville Railroad had virtual control of the policy of roads running into Chattanooga, although it did not touch that point;

(d) that the agreement of the lines running into Chattanooga was what prevented its having a lower rate;

(e) that the fact that to require a readjustment of the Chattanooga rates would upset the whole southern schedule, was immaterial, since the length of time which an abuse had continued did not justify it, and it was because time had not corrected abuses of discrimination that the Interstate Commerce Act was passed;

(f) that the law showed conclusively that Congress did not regard traffic managers as better judges of what were reasonable rates, that the Commission appointed by the Act was itself an expert tribunal, and even Courts were called on at all times to review the work of experts in all branches of business;

(g) that the defendants were violating Sec. 4 in charging a higher rate from the east to Chattanooga than to Nashville.

Decree affirmed.

162-D.—*East Tenn., V. & Ga. v. Interstate Commerce Commission*; 181 U. S. 1; 21 Sup. Ct. 516; 45 L. Ed. 719. Appeal from order of C. C. A., 6th Cir. (1901.)

The Commission had found that competitive conditions at Nashville, and the rates charged by the Louisville & Nashville Railroad, rendered it absolutely necessary for the other roads to adjust their charges to that of the Louisville & Nashville or lose the business. They had also found that rates to Chattanooga were not *per se* unreasonable, and had not passed upon the question as to whether the Louisville & Nashville Railroad had a controlling interest in one of the lines to Chattanooga, or as to whether competition at that point was stifled by an agreement between the carriers, including the Louisville & Nashville.

Held, (White, J.), (a) that the ruling of the Commission to the effect that competition of roads subject to the Act did not justify a preference or an exception to Sec. 4 on the carrier's own motion, was erroneous;

(b) that where a lesser charge for the greater distance was made necessary by competition at the more distant point, and where the rates at that point were remunerative and those at the shorter distant point not unreasonable in themselves, the rate relation was not rendered illegal because a preference or discrimination resulted, such preference or discrimination not being undue or unjust within the meaning of the Act;

(c) that as the Commission had not passed on the question on which the opinion of the Circuit Court of Appeals was based, namely the concerted action by the roads to Chattanooga stifling competition, and as the Commission's order was based on a misconstruction of the statute, the decree of the Circuit Court would be reversed and the order of the Commission would not be enforced, without prejudice to the right of the Commission to proceed further with the matter.

The question as to the concerted action by the roads or as to the illegal discrimination and preference on the part of the Louisville & Nashville not passed on.

Order accordingly.

163.—*Minneapolis Chamber of Commerce v. Great Northern Ry. Co., et al.* 5 L. C. C. Rep. 571; 4 Int. Com. Rep. 44. (Jan. 3, 1893.)

Complaint of unreasonable wheat rates from the west to Minneapolis, and preference of Duluth in such rates.

Duluth was from 5% to 25% farther, by short line, from the wheat belt than Minneapolis, but from Minneapolis there was more back loading. Wheat rates to Minneapolis and to Duluth from the west were the same, and the rate from Minneapolis to Duluth was 7½c. per 100 pounds, but this 7½c. was really a division of a through rate east. The lines to the coast sharing in the through eastern rates were not parties. Of the three lines from Minneapolis to Duluth,

one lay wholly in Minnesota and the others began and ended in that State, but entered Wisconsin en route. Duluth was on Lake Superior and in the open season most of the wheat went east from there by water. The rate from the west to Minneapolis was so adjusted as to put Minneapolis on an equality with Lake Michigan points, that is, the wheat rate to Minneapolis, plus the flour rate to Lake Michigan, equalled the wheat rate to Lake Michigan. Minneapolis had better and cheaper power than Duluth, but greater cost of plant and a less advantageous geographical situation for shipping east. Milling-in-transit privileges existed through many Minnesota and Wisconsin points.

Held, (McDill, C.), (a) that under the decision in *L. V. R. R. v. Penna.*, 145 U. S. 192, the Commission had no jurisdiction over a railroad starting and terminating in one State, though passing through part of another en route, so that it could not control the rate from Minneapolis to Duluth as a local rate;

(b) that it could not control it as part of a through rate since the eastern lines were not parties;

(c) that by reason of its nearer proximity to the wheat fields, Minneapolis was naturally entitled to a less rate from such fields than Duluth;

(d) that although rates were not usually proportional to mileage, yet such an adjustment was proper in this case by reason of the greater amount of backloading from Minneapolis;

(e) that such adjustment should be based on short line distance;

(f) (semble) that Duluth's position on the lake entitled it to an advantage as to eastern shipments.

Order accordingly.

164.—*Gerke Brewing Co. v. Louisville & N. R. Co., et al* 5 I. C. C. Rep. 596; 3 Int. Com. Rep. 681; 4 Int. Com. Rep. 267. (Feb. 28, 1893.)

Complaint of discrimination against Middlesboro, Ky., in favor of more distant Virginia points, on beer shipments from Cincinnati, and of violation of Sec. 4.

The rate in question was yielding 3½c. per ton mile, while that to Lynchburg, Va., twice as distant, yielded but 8 mills per ton mile. Defendants contended that there was not a common arrangement among the roads, but it appeared that they transported the freight at through rates and that a through route existed. There was competition of railroads and markets at the more distant points.

Held, (Veazey, C.), (a) that there was a common arrangement for continuous carriage to Middlesboro and as to such rates defendants were subject to the Act;

(b) that the purpose of the Act was to preserve legitimate competition and prevent illegitimate;

(c) that competition of markets and railroads subject to the Act did not justify the railroads in making exceptions to Sec. 4 on

their own responsibility, without application to the Commission;

(d) that if the rate to Lynchburg and surrounding points was remunerative, as it was presumed to be, that to Middlesboro was extortionate;

(e) that the burden of proof was on defendants to show their right to make the greater short haul charge, without having first obtained an order from the Commission, and this they had not done;

(f) that the defendants should adjust their rates to comply with Sec. 4, or apply to the Commission for relief under that section.

Order accordingly.

165.—**James & Abbott v. Canadian Pac. R. Co., et al.** 5 I. C. C. Rep. 612; 4 Int. Com. Rep. 45, 110, 274. (Mar. 11, 1893.)

Complaint of unreasonable rate on shingles from Ft. Fairfield, Me., to Boston, Mass., and demand for reparation.

Complainants were lumber merchants at Boston who sold shingles on commission. From Ft. Fairfield, 478 miles from Boston, the shingle rate was 31½c. per 100 pounds, while from Frederickton, N. B., 426 miles, it was 163-4c. These two points were on different branches which connected at Vanceboro, 359 miles north of Boston. As a result of the filing of the complaint the Frederickton rate was raised to 20c., and that from Fort Fairfield reduced to 26½c., but the Frederickton rate was later reduced to 17½c. At Fort Fairfield, by reason of better location and facilities, shingles could be produced 5c. per 1000 feet cheaper than at Frederickton. At the latter point there was perhaps competition by boat and since Frederickton was situated on the St. John River, 44 miles above St. John, logs could easily be floated down to the latter place and take the 153-4c. rate in force from there to Boston. It appeared, however, that no shingles were in fact shipped from St. John. There was no material difference in the conditions under which the transportation by rail was carried on from Frederickton and from Fort Fairfield.

Held, (Veazey, C.), (a) that complainants had an interest which entitled them to bring this complaint, and even if they had had no interest the Commission had power under Sec. 13 of the Act to proceed on its own initiative;

(b) that while the departure from equal mileage rates on different branches or divisions of a road was not conclusive of the unlawfulness of such rates, the burden was on the road making the departure to show its rates to be reasonable when disputed;

(c) that where water competition was alleged as a justification for a discrimination in rates, the burden was on the railroad to establish it clearly as a controlling factor important in amount;

(d) that the advantageous location of a shipper was no reason for discriminating against him in favor of one worse situated;

(e) that although water competition was not shown to exist at Frederickton, it did exist at St. John, and Frederickton was hence entitled to a low rate to prevent its lumber going via St. John;

(f) that a difference of 9c. in the rates to Fort Fairfield and Frederickton was unreasonable, that a 6½c. difference was ample, and that this differential could be arrived at either by raising the Frederickton rate or by reducing that from Fort Fairfield;

(g) that in considering the reasonableness of a through rate the Commission might examine its division among the roads participating in order to determine where the trouble lay;

(h) that in the present case the Canadian Pacific was receiving the larger part of the excess but that the various defendants were at liberty to arrange the reduction among themselves as they chose.

Order accordingly, but claim for reparation denied.

167.—Brownell v. Columbus & C. M. R. Co. 5 I. C. C. Rep. 638; 4 Int. Com. Rep. 285. (Apr. 1, 1893.)

Complaint of defendant's refusal to allow carload rates on eggs lower than rates on less-than-carloads.

Defendant gave an equal rating on eggs for carload and less-than-carload shipments. The large egg-dealers complained that this was inequitable, as they gathered up the eggs at an expense of 20c. per 100 pounds, whereas the railroads took up the less-than-carload shipments without charge and made carloads of them. It appeared that there was a lower carload rate on sugar, soap, celery and other produce, and that in the western States there was a carload rate on eggs. They also complained that the rate of 53½c. from Washington Court House to New York was excessive. It appeared that, under existing conditions, the large dealers had 83% of the trade; also that the railroads made larger profits on full carloads, and handled them with less danger.

Held, (McDill, C.), (a) that it was not discrimination, so far as regards eggs, that other articles were given a carload rate;

(b) that under present conditions, the large and small shipper were on an equality, and the Commission would not do anything to disturb that equality.

(c) (semble) that relief would rarely if ever be given to large and powerful shippers as against small ones.

Knapp, C., concurred; Morrison, C., dissented.

168.—Rice v. St. Louis, S. W. R. Co., et al. 5 I. C. C. Rep. 660; 3 Int. Com. Rep. 724; 4 Int. Com. Rep. 321. (May 18, 1893.)

Complaint of discrimination and preference in favor of shippers of oil in tanks by allowances, improper estimation of weights, and privilege of delivering parts of carloads en route at carload rates.

The allowance of 42 gallons per tank and the improper estimation of tank and barrel shipments, was covered in the decision and order in *Rice v. Cincinnati, Wash. & Balto. R. Co.*, (147), and the third ground of complaint was denied in the answer and not supported by the evidence.

Held, (Knapp, C.), that the first two causes of complaint were

covered in the former case and no further action with regard to them was required, and that as to the third ground the complaint should be dismissed.

169.—Tecumseh Celery Company vs. Cincinnati, J. & M. Ry. Co., et al. 5 I. C. C. Rep. 663; 4 Int. Com. Rep. 318. (June 15, 1893.)

Complaint of unreasonable rates and classification on celery from Tecumseh, Mich., to Kansas City, and of refusal to allow mixed car-load rates on celery and cauliflower.

Complainant contended that celery should be classed with cauliflower, asparagus, etc., and not with cherries, peaches, etc. The Official Classification made the rates on celery and cauliflower, etc., the same, at 19c. per 100 pounds, and was not complained of. The Western Classification, put celery with peaches, in class 3, at 32c., and not with cauliflower in class C at 15c. No answer was filed nor evidence offered by the defendant.

Held, (Veazey, C.), (a) that under Rule II, where no answer was filed, the Commission would take testimony and make such order as it saw fit;

(b) that relief would be granted as prayed.

Order accordingly.

170-A.—Troy, Ala., Board of Trade v. Alabama Midland, et al. 6 I. C. C. Rep. 1. (Aug. 15, 1893.)

Complaint of preference of Montgomery and Columbus, Ala., over Troy, in rates from New York, in rates to the Atlantic Seaboard for export (on cotton), in rates to New Orleans, in rates from western and northwestern points, and of violation of Sec. 4.

On shipments from New York and eastern points, rates to Montgomery were about 20% less than those to Troy through Montgomery. On export cotton Montgomery shippers were given the privilege of shipping to Liverpool via every port at the lowest combination of rail and ocean rates then in force via any port, while Troy shippers were required to pay the actual rates via the port through which shipments were in fact made. This privilege gave Montgomery shippers an advantage of from 10c. to 15c. per 100 pounds. Rates on cotton from Troy to New Orleans through Montgomery were higher by the local rate from Montgomery than Montgomery rates, the latter being 45c. and the former 45c. plus 23c. or 68c. The distance from Troy to New Orleans was 320 miles, and from Troy to Montgomery 52 miles. The rate to New Orleans from Columbus, Ala., (414 miles, but by a different line) was 50c. per 100 pounds. From the west, rates to Troy were much greater than to Montgomery, but the difference did not equal the local rates between Troy and Montgomery. One of the defendants had recently gone into the hands of a receiver. Defendants contended that they participated in no through traffic to Troy, receiving the local rates in every case. They

also alleged water competition at Montgomery. It appeared that the relief prayed for would necessitate very considerable rate alterations throughout the region.

Held, (Clements, C.), (a) that a receiver was a common carrier subject to the Act;

(b) that where two connecting roads participated in through traffic they were part of a common arrangement and subject to the Act;

(c) that the burden of showing competition by water in justification of the rates in question was on the defendants and had not been sustained, and hence there was no justification for higher rates from New York to Troy than to Montgomery;

(d) that the trade-centre system of making rates had often been condemned by the Commission;

(e) that a through rate composed of a local plus a through rate was *prima facie* excessive and hence rates from Troy to New Orleans were excessive;

(f) that it was no reason for refusing to adjust Troy rates that this would necessitate the adjustment of rates to surrounding localities;

(g) that rates to and from Troy through Montgomery should not exceed those to and from Montgomery, that rates from Troy to New Orleans and from the west to Troy should not exceed rates from or to Columbus.

Order accordingly.

170-B.—Interstate Commerce Commission v. Alabama Midland R. Co., et al. 69 Fed. 227; 5 Int. Com. Rep. 308. C. C. N. D. Ala. (July 9, 1895.)

Petition to enforce order issued in above, requiring cessation of the violation of Sec. 4, and preference of Montgomery and Columbus, and of charges greater than those specified on certain articles.

It appeared that competition was responsible for the rate situation in question. Troy rates were made by combining those to Montgomery or Columbus with the local rates from there to Troy, no matter whether Troy were more or less distant from the point of shipment than the point on which the rate was based.

Held, (Bruce, D. J.), (a) that although where trade centres or basing points were built up by the railroads arbitrarily, and without any compelling commercial causes, an illegal rate situation might arise, such was not the case where, as here, the rates were the result of competition;

(b) that the preference, created by dissimilar circumstances and conditions resulting from competition, was not undue or unreasonable;

(c) (seem) that Montgomery merchants had the right to have their goods hauled from Montgomery to Troy at the same rate as Cincinnati merchants.

Petition dismissed.

170-C.—Interstate Commerce Commission v. Alabama Mid. R. Co.
74. Fed. 715; 21 C. C. A. Rep. 51; 41 U. S. App. Rep. 453.
C. C. A., 5th Circuit. (June 2, 1896.)

Appeal from foregoing.

It appeared that when, a few years before, rates by rail to Montgomery were somewhat higher, there had been strong water competition, and that though not much freight now went by water, there was still potential water competition.

Held, (McCormick, C. J.), reviewing the Import Rate and Social Circle cases, (a) that the competition of railroads rendered the conditions at Montgomery and Troy different and justified the existing rates;

(b) that the potential water competition also justified lower rates to Montgomery;

(c) that the Commission was without power to fix maximum rates;

(d) that "within the limits of the exercise of intelligent good faith in the conduct of their business, and subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the Act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and, generally, to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. The carriers are better qualified to adjust such matters than any Court or board of public administration, and within the limitations suggested, it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business."

Judgment affirmed.

170-D.—Interstate Commerce Commission v. Alabama Midland R. Co.
168 U. S. 144; 18 Sup. Ct. 45; 42 L. Ed. 414. Appeal from C. C. A. 5th Circuit. (Nov. 8, 1897.)

Held, (Shiras, J.), (a) that the Act gave the Commission no power to fix rates for the future, either maximum, minimum, or absolute, and it "did not intend to secure the same result indirectly by empowering that tribunal, after having determined what, in reference to the past, were reasonable and just rates, to obtain from the Courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just";

(b) that competition of all kinds was a proper consideration in determining whether circumstances and conditions were similar or whether preferences were undue and unreasonable;

(c) that the mere fact of competition, no matter of what character, or extent, did not relieve the carrier of the restraints of the third and fourth sections;

(d) that competition between rival routes was not a consideration in questions under Sec. 2, the phrase "under substantially similar circumstances and conditions" as there used referring merely to the matter of carriage, and that section covering only discrimination in shipments by rival shippers over the same route;

(e) that the questions of whether or not the circumstances of carriage were substantially similar, or whether there had been an undue or unreasonable prejudice or preference, were questions of fact depending on the matters proved in each case;

(f) that although the carriers might determine for themselves in the first place whether the circumstances, including competition of all kinds, were such as to justify an exception to Sec. 4, this determination was subject to review by the Commission and the Courts;

(g) that the Courts had power to review and correct the decisions of the Commission on questions of fact, and they were not restricted to the evidence before the Commission;

(h) that nothing was found in the record to justify a reversal of the findings of the Courts in this case.

Decree affirmed.

Harlan, J., dissented, both as to the power of the Commission and as to the question of the competition among rival railroads.

171.—*Phelps & Co. v. Texas & Pac. R. Co.* 6 I. C. C. Rep. 36; 4 Int. Com. Rep. 44, 104, 363. (Oct. 16, 1893.)

Complaint of discrimination against complainant in delivery without prepayment of freight to his competitors and not to him.

Defendant had a rule allowing delivery of cotton without prepayment of freight to companies who signed an agreement guaranteeing its payment in full on demand, with recourse against the company for overcharges, damages, etc. Complainant had shipped cotton by water and rail (defendant being the terminal road) on through bills of lading, but refused to pay a manifest overcharge of \$10.50, whereupon defendant discontinued the above privilege as to him and refused to put it in force again even after admitting and abandoning the overcharge after 13 months of negotiations. Complaint was also made that defendant charged for 535 pounds per bale on cotton not accompanied by an original invoice or certificate of a public weigher as to actual weight, overcharges being refunded on production of the above, but being very difficult to collect.

Held, (Knapp, C.), (a) that the freight in question was transported under a common arrangement between the water and rail carriers who were thus subject to the Act;

(b) that the refusal to allow complainant the same privilege allowed others was an undue discrimination which should cease;

(c) that the practice of billing at estimated weights, where actual

rates could not be accurately determined, was legal if overcharges were settled promptly with shippers, but that delays in settling overcharges often effected unjust discrimination and officials responsible therefor became fairly chargeable with wilful intention to violate the law;

(d) that a failure to state services or privileges connected with the delivery of traffic, in the published tariffs, was a violation of Sec. 6. Order accordingly.

172.—Schumacher Milling Co., et al. v. Chicago, R. I. & P. R. Co., et al. 6 I. C. C. Rep. 61. (Oct. 20, 1893.)

Complaint of unreasonable rates on cereals from Akron, Ohio, to points in Western Classification Territory, and of defendants' refusal to give mixed carload rates on different varieties of cereals.

Complainant manufactured half the cereals produced in the United States. Under the Official Classification cereals took the same rates as flour, and mixed carload rates on different cereals were allowed, but under the Western Classification there was no such mixed carload rate, and rates on cereals were considerably higher than on flour. Cereals were 33% more valuable per pound than flour, and were as easy to handle, but the flour traffic was 25 times greater. There were more empty cars west-bound than east-bound.

Held, (McDill, C.), (a) that the fact of there being different rates and relations of rates under different classifications did not render the rates under the higher classification unreasonable *per se*;

(b) that cost of service was not the sole consideration in fixing rates;

(c) that although the presence of empty cars in a given direction was an excuse for low rates in that direction, it was not a circumstance sufficient to require the reduction of rates already reasonable;

(d) that the rates in question were reasonable;

(e) that the Commission would not order mixed carload rates since this would further strengthen complainant, which already controlled one-half the cereal output, at the expense of the smaller dealers.

Complaint dismissed.

173.—Duncan v. Atchison, T. S. F. R. Co., et al. 6 I. C. C. Rep. 85; 3 Int. Com. Rep. 256; 4 Int. Com. Rep. 385. (Nov. 3, 1893.)

Complaint of unreasonable charge for household goods from Louisville, Ky., to Los Angeles, Cal., and demand for reparation.

Complainant shipped a carload of household goods from Louisville to Los Angeles, but included also certain provisions which did not properly come within the commodity rates on "emigrants' movables" in force at that time. The initial railroad, the Louisville

and Nashville, agreed, however, to take such provisions as part of a carload at \$263, the carload rate on "emigrant movables." At Los Angeles the Southern Pacific demanded \$128.10 extra, this being the regular published rate on such provisions, and detained the provisions until they were damaged, but after correspondence the L. & N. finally notified the Southern Pacific to charge the \$128.10 against it, and the Southern Pacific delivered up the freight to the complainant. There were in force at the time two rates on household goods, the class rate of \$350 per car, and a special rate for "intending settlers" at \$263. The \$263 rate, however, was allowed practically to every one. The latter rate did not apply to east-bound traffic and this was alleged as a discrimination. At the \$350 and \$263 rates the railroad stipulated for minimum damages at \$5 per hundred pounds, but there was no evidence that this was not the average value of goods shipped. The less-than-carload rate on household goods was \$3.54 per hundred pounds and at this rate the shipper paid the same amount for 9750 pounds as for 20,000 pounds at the \$350 carload rate, or the same as the 7400 pounds at the \$263 rate. There was no evidence as to the difference between the expense of hauling carload and less-than-carload freight. The rates on household goods did not apply to goods intended for sale. It was claimed also that the Transcontinental Freight Association was operating under a pooling agreement. Complainant also claimed damages for the injury to his goods during their detention by the Southern Pacific.

Held, (Clements, C.), (a) that damages for injury to goods were not recoverable before the Commission;

(b) that it was proper for the Southern Pacific to demand the published rate and was a violation of the Act for the Louisville & Nashville to contract to charge less than that rate;

(c) that since the complainant was innocent he could probably enforce his contract against the Louisville & Nashville;

(d) that the intention of the shipper to settle along the line of the railroad was no reason for giving him a special rate, and that the rate to "intending settlers" should be the same as the class rate to all;

(e) that a west-bound rate need not be the same as an east-bound one;

(f) that a difference in carload and less-than-carload rates was proper, but should not be unreasonable;

(g) that as such difference was here 300% it would seem unreasonable if applied to persons selling the goods, but that under the present circumstances this question would be left open;

(h) that the evidence disclosed no pooling agreement.

Ordered that the tariffs be amended to comply with the foregoing opinion.

Demurrer to declaration alleging exaction of unreasonable rates, in cases removed from State Court.

Held, (Grossepup, D. J.), (a) that there was no common law of the United States under which excess charges on interstate shipments could be recovered;

(b) that the State Court having no jurisdiction under the Act, removals of such cases to the Federal Courts could not be supported.

Demurrers sustained.

174-B.—Swift v. Phila. & R. R. Co. 64 Fed. 59. C. C. N. D. Ill. (Nov. 5, 1894.)

Motion for leave to file demurrer to declaration alleging unreasonable rates on interstate shipments.

There was no averment that no rates were filed under the Act.

Held, (Grossepup, D. J.), (a) that there was no common law of the United States which required carriers to charge only reasonable rates on interstate shipments prior to the Act;

(b) that as regards shipments subsequent to the Act the averments of the declaration were defective.

Motion granted, however, as to counts on shipments prior to the Act, and denied as to those subsequent.

175.—Cator v. Southern Pac. R. Co., et al. 6 I. C. C. Rep. 113; 4 Int. Com. Rep. 397. (Nov. 10, 1893.)

Complaint of defendant's refusal to give special excursion rates to Omaha from the Pacific Coast at the time of the Populist Convention there, though they had allowed them for the Republican and Democratic Conventions at Chicago and Minneapolis during the previous month.

The rates allowed by defendants at the time of the two other conventions had been open to the public, but defendants had been guaranteed 150 tickets while complainants would guarantee them only 36.

Held, (McDill, C.), that though defendants might in fairness have allowed a special rate here, they were not bound to do so by reason of their having allowed one to the previous conventions.

Complaint dismissed.

176.—Morrell v. Union Pac. R. Co., et al. 6 I. C. C. Rep. 121; 3 Int. Com. Rep. 641, 642; 4 Int. Com. Rep. 469. (Dec. 22, 1893.)

Complaint of unreasonable wheat rates from Pullman, Wash., to Portland, Ore., and demand for reparation.

The rate in question was originally 32½c. per 100 pounds, but after this complaint was filed, it was reduced to 23¾c. Complainant contended that it should not exceed 20c., and offered evidence of lower rates over other branches, and also of the 20c. rate (recently

reduced from 23½c.) from Pendleton, Ore., to Seattle, Wash., a distance of fifty miles less than that in question. There were heavy grades to overcome on the haul from Pullman to Portland with quantities of snow to clear away in winter and other difficulties in operation of the road.

Held, (Morrison, C.), (a) that the rates in other localities were of little value;

(b) that as substantial reductions had been made to within 3¼c. of the rate asked for, the Commission would not order a further reduction;

(c) that defendant should refund the excess rates paid by complainant above 23¼c.

Order accordingly.

177.—Bigbee & Warrior Rivers Packet Co. v. Mobile & O. R. Co.
60 Fed. 545; 4 Int. Com. Rep. 829; C. C. S. D. Ala. (Dec. 30, 1893.)

Demurrer to answer by respondent to claim at law for damages for discrimination in exacting a rate of \$1.25 per bale on cotton from Mobile to New Orleans, while the rate charged to other shippers was but 80c. per bale.

Relator operated a line of steamers on the Alabama River, carrying cotton from points thereon to Mobile. Respondent had agreed with other carriers from points on the river that it would charge \$1.25 per bale on cotton coming from such points by vessel to Mobile and alleged that this fact made the circumstances and conditions of the shipment from Mobile different from those in ordinary shipments from Mobile.

Held, (Toulmin, D. J.), (a) that this was not a through shipment from Demopolis, where relator took up the cotton, and the conditions were in no material way dissimilar to other shipments from Mobile;

(b) that not every dissimilarity of circumstances and conditions was sufficient to justify a dissimilarity of rates, since there must be a substantial dissimilarity of circumstances, and this was but a remote dissimilarity;

(c) that the circumstances and conditions to be considered are those which bear on the transportation by the particular carrier and under which such transportation is conducted.

Demurrer overruled.

178-A.—Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., et al. 59 Fed. 400; 4 Int. Com. Rep. 537; C. C. E. D. Ark. (Jan. 5, 1894.)

Demurrers to bills in equity and complaints at law to compel defendants to allow complainants equal facilities for the interchange of traffic allowed rival roads.

Defendants had agreements for through routes and rates with roads competing with complainant, but refused to accept through

tickets at reduced rates via complainant's line, requiring rebilling of freight and reloading into its own cars at the junction point, and prepayment of charges.

Held, (Williams, D. J.), that as the Act specifically provided that Sec. 3 should not be so construed as to require any carrier to give the use of its tracks and terminal facilities to another carrier engaged in a like business, and as each of the privileges here demanded involved the use of these facilities, defendants were not required under the Act to contract for through routes with one connecting carrier by reason of having done so with a rival.

Demurrers sustained.

178-B.—Little Rock & M. R. Co. v. St. Louis & S. W. R. Co., et al. 63 Fed. 775; 11 C. C. A. Rep. 417; 26 L. R. A. 192; 27 U. S. App. 380; C. C. A. 8th Circuit. (Sept. 24, 1894.)

Appeal from above.

Held, (Thayer, C. J.), (a) that the Act did not require a railroad to carry freight from one connecting line without requiring prepayment of charges because it allowed this to a competing line;

(b) that it did not require a railroad to treat all connecting carriers alike without reference to its own interest;

(c) that neither the Act nor the common law required railroads to enter into arrangements or agreements with each other for the through billing of freight and for joint through rates, and Courts had no power to compel such arrangements;

(d) that railroads were not bound to receive freight from connecting lines in the cars of the latter without requiring reloading, although this privilege was allowed some and denied others, the physical facilities being the same.

Judgment affirmed.

179.—Newland, et al. v. Northern Pac. R. Co., et al. 6 I. C. C. Rep. 131; 3 Int. Com. Rep. 648, 649; 4 Int. Com. Rep. 474. (Jan. 31, 1894.)

Complaint of unreasonable wheat rates from Ritzville, Wash., to Portland, Ore.

There were two routes between the above points, one via Wallula, Wash., 311 miles in all (97 miles by the N. P., and 214 by the U. P. and affiliated roads), and the other via Tacoma, Wash., 478 miles long, all being over the line of the N. P. The latter route in addition to being 167 miles longer, was over steep grades, while the Wallula route had easy grades. The rate over each route was the same, being at the time of filing the complaint 32½c. per 100 pounds, and was a group rate including Ritzville on a group extending from a point 266 miles from Portland to another 481 miles distant. This group had been put in force by the roads early in the growth of the grain trade, to encourage the sale of land at distant points. Complainant desired his wheat taken by the shorter route at a lower

rate, but as the rate was the same over either he allowed it to go by the long route as desired by the N. P., the initial road. After the filing of the complaint the rates were reduced to 28¾c. and again to 23¾c., but complainant contended that a 16½c. rate was reasonable. The U. P. claimed that a certain road forming part of the haul in question, which had been leased by the U. P., was yielding less than the rent paid therefor. There was evidence of the cost of producing wheat and of the low profit possible to the producer.

Held, (Morrison, C.), (a) that under the Act, complainant was entitled to have his products carried by the shortest and least expensive route at a reasonable through rate, so that the rate between any points should be a reasonable one by the short line route;

(b) that the grouping system was proper over a very extensive territory only under exceptional circumstances, and was not to be encouraged where the difference in the cost of haul from the extreme points was considerable;

(c) that in order that railroad investments might be as secure as other property the reasonable rate allowed over a new line should be liberal until earnings were sufficiently large for a fair return on actual expenditure, but the actual return for hauls over a "feeder" branch line could not be determined merely by the amounts received for the actual hauls over such branch;

(d) that where the market price of an article was so low as to yield a scant profit to the producer, the railroad rate should be as moderate as was consistent with justice to the carrier;

(e) that although the 23¾c. rate was reasonable from the most distant points in the group, as to the nearer points it was unreasonable;

(f) that a reasonable rate from Ritzville was 20c.

Order accordingly.

180-A.—*Page, et al. v. Delaware, L. & W. R. Co., et al.* 6 I. C. C. Rep. 148; 4 Int. Com. Rep. 525. (Mar. 23, 1894.)

Complaint of unreasonable rate and classification of window shades, compared with those on hollands.

Complainant was a manufacturer of window shades at Minetto, N. Y. Shades were given first class rates while hollands, the substance of which the shades were made, were rated third class. During the preceding few years the price of shades had greatly decreased by reason of the use of machinery in their manufacture, while the value of hollands had remained the same. A case of hollands was almost twice as valuable as one of the same size and weight of shades, by reason of the addition of cheap rollers and other articles in making the shade. It appeared that for a number of years complainant had been billing shades as hollands with the knowledge and acquiescence of defendant.

Held, (Veazey, C.), (a) that although in certain cases relief was denied to a complainant who was violating the law, the present case

should be decided in the interest of other shippers and of the public in general without regard to complainant's previous conduct;

(b) that in view of the reduced value of shades and the greater value of hollands, shades should be placed in third class.

Order accordingly.

180-B.—Interstate Commerce Commission v. Delaware, L. & W. R. Co., et al. 64 Fed. 723; C. C. N. D. N. Y. (Dec. 3, 1894.)

Proceedings to enforce order issued in above requiring defendant to cease from charging a higher rate on window shades than on third class articles.

The window shades varied in price from the plain variety at \$3 per dozen, to the hand decorated at \$10.

Held, (Wallace, C. J.), that the order was unreasonable in ignoring the element of value of service to the shipper and of risk to the carrier.

Petition dismissed.

Note.—Motion was made for a rehearing in this case, counsel presenting a certificate from the Commission to the effect that the Commission did not intend its order to be so broad as to include the expensive varieties, but this motion was dismissed, Judge Wallace holding that the Court had no revisory powers over orders of the Commission and must enforce or dismiss the order as framed.

180-C.—Page, et al. v. Delaware, L. & W. R. Co., et al. 6 I. C. C. Rep. 548. (Mar. 4, 1896.)

Rehearing of complaint of unreasonable rates and classification on window shades compared with these on hollands.

When the Commission brought action in the Federal Court to enforce the order issued in the previous case, this order was held unreasonable as providing the same rates for shades of all values (such contention never having been made by defendants before the Commission), and the case was dismissed without prejudice to complainant's right to proceed further. Defendants contended that the Commission had no power to fix rates. All the members of the Official Classification were not parties. It appeared that complainants had prospered under the first class rates.

Held, (By the Commission), (a) that the Commission had power to order a rehearing and modify its order after the Court had refused to enforce such order, where such refusal was based on a point remedied by the modified order;

(b) that the Commission was not a court, but had power to fix maximum rates, and to order a carrier to cease doing what was unlawful and to do what was lawful under the Act;

(c) that the other members of the Official Classification Committee were proper but not necessary parties;

(d) that rates should not only be reasonable *per se*, but relatively reasonable;

(e) that the prosperity of a shipper did not justify a road in charging him unreasonable rates;

(f) that although usually a higher rate should be charged on the finished product than on the material from which it was made, the present case was an exception to the general rule;

(g) that the same order would be issued as previously, except that third class rates would be required to be applied only to shades of the value of \$6.00 per dozen.

182.—Rhode Island Egg & Butter Co., et al. v. Lake Shore & M. S. R. Co., et al. 6 I. C. C. Rep. 176; 4 Int. Com. Rep. 512. (May 26, 1894.)

Complaint of unreasonable rate and classification on empty egg cases from Providence, R. I., to Iowa points.

Prior to 1892 empty egg-cases (in which eggs had been shipped east) were returned to Iowa points at third class rates while new egg-cases were rated first class. The roads then issued a circular prescribing certain dimensions, materials, etc., for egg-cases, and stating that used cases complying with such requisites should take second class rates, while others would take first class. Certain shippers desired to return used egg-cases while others preferred to have them broken up. On a protest being made against the circular, it was withdrawn and all egg-cases placed in first class. Used crates were still left third class.

Held, (By the Commission), (a) that there was no discrimination or preference shown between crates and egg-cases since they were not competitive commodities;

(b) (semble) that as a general rule a shipper should have the right to use, without favor by arbitrary classification, packages or cases of the size, etc., that he might choose, provided such cases were in good order;

(c) (semble) that a rate might well be proper when applied to transportation of an article as a disconnected service, but unreasonable as applied to the same service as incidental to some other service.

Case left open for amicable adjustment by the parties or further proceedings by the complainant, the evidence not being deemed adequate on which to base an order.

183-A.—Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., et al. 6 I. C. C. Rep. 195; 4 Int. Com. Rep. 592. (May 29, 1894.)

Chicago Freight Bureau v. Louisville, N. A. & C. R. Co., et al. 6 I. C. C. Rep. 195.

Complaint by Cincinnati shippers of preference of eastern shippers over complainants in rates to southern points, and by Chicago shippers of preference of Cincinnati over them in rates to above points.

Defendants' roads were members of the Southern Railway & Steamship Association. Prior to 1878 the east had furnished the south with most of its manufactured goods and the west had furnished most of its raw materials. In that year, after numerous rate wars, the roads had made an agreement, often since renewed, the practical purpose and result of which was to divide the traffic. Under such agreement, rates on manufactured articles from New York and New England were but about half as high per ton mile as rates from Chicago and Cincinnati, the rate being the same for a haul twice as long. Since the agreement was made manufacturers had grown largely in the west. The roads alleged competition by water from eastern points as a justification, but it was apparent that the real cause was a purpose by them to divide the traffic. The agreement contained a system of dues and fines for disobeying the rules of the association by which the different roads were indemnified when another came into their proper territory. Another rule provided that members of the association should charge full local rates on traffic in association territory coming from or going to connecting roads which did not maintain association rates. Chicago shippers also complained that the rate from Chicago to the southern territory was the Cincinnati rate plus the full local from Chicago to Cincinnati, giving an undue advantage to Cincinnati. It was not alleged that the rates from eastern points were unreasonably low.

Held, (Clements, C.), (a) that without deciding the question of the joint liability of all the defendants for the maintenance of the rates in question, there was clearly a several liability on the part of each for any unreasonable rates over its own line;

(b) that the roads in question were each part of a "common arrangement" within the meaning of the Act;

(c) that where a railroad departed from the mileage basis system of rate making, the burden was on it to justify the higher rates, and that this principle applied under the facts here presented, both where the lower rate alleged as the proper basis for comparison was over its own line, and where it was over a different railroad;

(d) that competition by water did not justify any discrimination beyond what it necessitated, and that in the present case the discrimination was not the result of such competition, but of the traffic division agreement;

(e) that proof of the agreement made out a *prima facie* case of undue discrimination which defendants had not met;

(f) that since the Chicago rates were made by combining two rates, each in itself reasonable, the through rate so formed was *prima facie* unreasonable;

(g) that such rates were not justified on the ground of equalizing market or geographical advantages or on the ground of competition of rival markets;

(h) that both the Cincinnati and Chicago rates should be reduced,

those from Chicago to a greater extent than those from Cincinnati;

(i) that the association rule as to charging local rates to connecting carriers not observing association rules, was an undue discrimination against such carriers, illegal under the second paragraph of Sec. 3 of the Act;

(j) that the evidence disclosed a pooling agreement illegal under Sec. 5.

Order accordingly.

183-B.—Shinkle, Wilson & Kreis Co., et al. v. Louisville N. R. Co., et al. 62 Fed. 690; C. C. S. D. Oh. W. D. (July 30, 1894.)

Motion to dissolve preliminary injunction, issued *ex parte*, to enforce order of Commission made in above, requiring defendants to desist from charging more than certain maximum rates on freight from Cincinnati to Southern points.

After the Commission's order was issued defendants had reduced their rates to the required figure, but had since raised them again. After the injunction was issued they filed an answer denying that these rates were unreasonable;

Held, (Lurton, C. J.), (a) that a preliminary injunction was not proper in such a case;

(b) (semble) that Sec. 16 contemplated an injunction only after full hearing.

Restraining order dissolved.

183-C.—Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., et al. 64 Fed. 981; 5 Int. Com. Rep. 131; C. C. S. D. Oh. W. D. (Nov. 30, 1894.)

Motion for preliminary injunction to enforce order in 183-A.

Held, (Sage, D. J.), (a) that the allegations in the complaint as to the unreasonableness of the rates in question being denied in the answer, the preliminary injunction would be denied;

(b) that defendant would not be required to keep an account with each shipper pending the hearing or to pay into Court the alleged excess rate on each shipment;

(c) that the transcript of the evidence taken before the Commission need not be filed with the Court with its petition, although either party might introduce in evidence such of it as was competent and relevant to the issue, and although every official act of the Commission was part of the record.

Motion denied.

183-D.—Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., et al. 76 Fed. 183. C. C. S. D. Oh. W. D. (Oct. 8, 1896.)

Petition by Commission to enforce order issued in the above, requiring defendants to desist from charging rates higher than certain maximum rates fixed.

Held, (Sage, D. J.), (a) that to fix rates was a legislative act;

(b) that the Interstate Commerce Commission was not invested and could not be invested constitutionally with either legislative or purely judicial power, its functions being necessarily restricted to administrative duties with such quasi judicial powers as are incidental and necessary to the proper performance of those duties;

(c) that the Interstate Commerce Commission had no power to fix rates.

Petition dismissed.

183-E.—Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. 167 U. S. 479; 17 S. Ct. Rep. 896; 42 L. Ed. 243. (May 24, 1897.)

Certificate from C. C. A. 6th Circuit, asking whether or not the Commission had power to make the order in question, requiring defendants to cease from charging rates greater than those enumerated between certain points.

Held, (Brewer, J.), (a) that to declare whether or not given rates were reasonable was a judicial act, but to prescribe what rates should be charged in the future was a legislative act, which Congress would not be presumed to have delegated to the Commission in the absence of express words to that effect;

(b) that other sections of the Act clearly showed that the railroads were given power to fix and change their own rates;

(c) that the Commission had no power to fix rates indirectly by ordering carriers to charge in the future rates determined to have been in the past reasonable and just.

"Our conclusion then is that Congress has not conferred upon the Commission the legislative power of prescribing rates either maximum or minimum or absolute. As it did not give the express power to the Commission it did not intend to secure the same result indirectly by empowering that tribunal to determine what in reference to the past was reasonable and just, whether as maximum, minimum or absolute, and then enable it to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just."

Question answered in the negative.

Harlan, J., dissented.

184-A.—Union Trust Company of New York v. Atchison, T. & S. F. R. Co. 64 Fed. 992. C. C. N. D. Ill. (Nov. 26, 1894.)

Petition by a live stock dealer of Chicago to require a receiver to discontinue a \$2 terminal charge on live stock delivered at the Union Stock Yards, on shipments from Kansas City.

Prior to June, 1894, the railroad companies running from Kansas City and other points to Chicago had been delivering live stock at the stock yards at a single freight rate. These companies had no

live stock depot of their own and the stock yards were not on their line of track, but reached only over a line owned by the Union Stock Yards Company. Until June, 1894, no charge was made by the Stock Yards Company to the railroad for the use of its tracks, and prior to this date the railroads did not divide their rates by separately charging for carriage from the point of shipment to Chicago and for terminal services rendered at Chicago. In June, 1894, the Stock Yards Co. imposed a trackage charge of from 80c. to \$1.50 per car for carrying carloads of cattle to the Stock Yards and bringing out the empty cars. The railroad officers thereupon entered into an agreement that each road would impose a terminal charge of \$2 per car, and issue a circular and insert a stipulation in their printed tariffs to that effect. In this case a shipper refused to pay the added charge and petitioned the Court to instruct the receiver to make delivery of the cattle consigned to him without payment of it.

Held, (Grossepup, D. J.), (a) that a shipper had the right to require a carrier to deliver freight at the point which it held out as its depot for a single freight rate which covered the entire service;

(b) that although where delivery was made at some point other than the carrier's regular depot, and was service in addition to that which the carrier was legally required to perform in pursuance of its duty as a common carrier, a separate terminal charge was proper, yet it was not proper, where delivery was at the regular depot, to separate any of the regular items of transportation;

(c) that the law required the carrier to name under a single and definite item the cost of its entire undertaking in the course of regular transportation from station to station.

Order entered accordingly.

184-B.—Walker, et al. vs. Keenan, et al. 73 Fed. 755; 19 C. C. A. 668; 34 U. S. App. Rep. 691; C. C. A. 7th Circuit. (May 4, 1896.)

Appeal from the foregoing order of C. C. N. D. Ill. requiring defendant to deliver to the plaintiff live stock at Chicago without the payment of a \$2 terminal charge.

Held, (Showalter, C. J.), (a) that Covington Stock Yards Company v. Keith, (123), held merely that when the means for the delivery of cattle had been provided by the consignee at a suitable point on its line, a railroad might not refuse to make such delivery for the sole purpose of compelling such consignee to pay a charge fixed by the railroad in response to its obligations to provide the means of unloading, since the consignee necessarily required that service;

(b) that in a case like the present it was proper for the carrier to separate its charges and to specify the terminal charge as an extra item;

(c) that even though the Covington Stock Yards case had held that at common law, the carrier might not separate its charges, this

rule had been modified by the Interstate Commerce Act, which gave express sanction to the stating of the terminal charge as a separate item;

(d) that the reasonableness of the charge was not here passed upon.

Order reversed.

186-A.—Behlmer v. Memphis & C. R. Co., et al. 6 I. C. C. Rep. 257; 4 Int. Com. Rep. 520. (June 27, 1894.)

Complaint of unreasonable rates on hay from Memphis, Tenn., to Summerville, S. C., and violation of Sec. 4 by lower rates to Charleston, S. C., a more distant point on the same line.

Defendants charged a higher rate (28c.) on hay and like products from Memphis to Summerville, S. C., than to Charleston, via Summerville, (19c.) This they sought to justify by competition of railroads subject to the regulation of the Act, and by market competition from Baltimore and Atlantic Coast points.

Held, (Yeomans, C.), (a) that a carrier averring substantial dissimilarity in circumstances and conditions, in a complaint under Sec. 4, as justifying a greater charge for short hauls, was bound to show affirmatively that these were substantially dissimilar, but upon an application for relief under the proviso of Sec. 4, the carrier was not limited by such a rule of evidence, and might present to the Commission every material reason for an order in its favor; *Georgia R. R. Commission v. Clyde Steamship Co.*, (154-A), followed;

(b) that the two excuses alleged were not such as to justify carriers in departing from the rule of Sec. 4 without a relieving order;

(c) that two weeks would be given to the railroad company in which to change the rate or to apply for relief.

186-B.—Behlmer v. Louisville N. R. Co., et al. 71 Fed. 835. C. D. S. C. (Jan. 22, 1896.)

Petition to enforce order issued by Commission in above, forbidding the exaction of a greater charge from Memphis to Summerville, S. C., than to Charleston, S. C., a more distant point on the same line.

At Charleston there was strong market competition and also competition of rival roads, while at Summerville there was none, there being but one line through that point. A short time after the issuance of the order of the Commission, the S. C. R. Co., then in the hands of the receiver, was sold to the S. C. & G. R. Co. The Circuit Court found that no notice of the order was given to the successor, but the Circuit Court of Appeals found that such notice was given. The agreement of purchase bound the purchaser to all obligations of the receiver. The Summerville rate was made by adding the local rate

of the S. C. R. Co. from Charleston, the latter receiving the entire sum as its share of the through rate.

Held, (Simonton, C. J.), (a) that the successor to the S. C. R. Co. was not bound by the order;

(b) that there was no common arrangement as regards the Summerville business;

(c) that the competition in question justified the rates.

Bill dismissed.

186-C.—Behlmer v. Louisville & N. R. Co., et al. 83 Fed. 898; 28 C. C. A. Rep. 229; 42 U. S. App. 581; C. C. A. 4th Circuit. (Nov. 3, 1897.)

Appeal from foregoing.

Held, (Goff, C. J.), (a) that the S. C. & G. R. Co. had notice of the order against its vendor the S. C. R. Co. and was bound thereby;

(b) that the burden of showing dissimilarity of circumstances to justify an exception to Sec. 4, was on the carrier;

(c) that neither competition of markets nor of railroads subject to the Act was sufficient to justify the railroads in making an exception to Sec. 4, on their own responsibility;

(d) that the importance of the rate relation to Charleston did not justify it.

Decree reversed.

Morris, J., dissented.

186-D.—Louisville & N. R. Co. v. Behlmer. 175 U. S. 648; 20 S. Ct. Rep. 209; 44 L. Ed. 309; Appeal from C. C. A. 4th Cir. (Jan. 8, 1900.)

It appeared that the traffic in question was taken to Summerville on through bills of lading by continuous carriage on agreed shares of the through rate.

Held, (White, J.), (a) that the shipments to Summerville were under a "common arrangement" subject to the Act;

(b) that competition of all kinds, including that of railroads subject to the Act and of different markets, must be taken into consideration in passing on the legality of a rate relation, and that these considerations warranted carriers, of their own motion, in making exceptions to Sec. 4;

(c) that the competition in question must, nevertheless, be not artificial or conjectural merely, but material and substantial, and all the rates in question must be just and reasonable;

"It follows that whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First. The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determina-

tion of whether competition was such as created a substantial dissimilarity of condition. Second, That the competition relied upon be, not artificial, or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved, as well as those to be derived by the locality to which it is to be delivered."

(d) that as the Commission had not passed on or weighed the competition in question, the proper procedure was to refer the case back to the Commission, since the courts should have the benefit of that body's findings on the facts, made with a proper consideration of the legal principles involved.

Order accordingly.

187-A.—United States v. Missouri Pac. R. Co. 65 Fed. 903; 5 Int. Com. Rep. 106; C. C. S. D. Kas. S. D. (Sept. 14, 1894.)

Demurrer to bill filed under direction of Attorney General at request of Commission for injunction to prevent the exaction of rates from St. Louis and Wichita, Kas., alleged unreasonable and as giving an undue preference to Omaha.

No preliminary investigation had been made by the Commission, but the bill alleged that the proceedings in question were at its request.

Held, (Williams, D. J.), that under the amendments of March 2, 1889, and February 10, 1891, to Sec. 12 of the Act, the Courts were given power to enforce by injunction the provisions of the Act, at the suit of the Attorney General, in cases begun at the request of the Commission, without the intervention of a formal investigation by that body.

Demurrer overruled.

The above judgment was sustained by the Circuit Court of Appeals of the 8th Circuit. (See 189 U. S. 275.)

187-B.—Missouri Pac. R. Co. v. United States. 189 U. S. 274. (March 9, 1903.)

Appeal from C. C. A. 8th Circuit.

Held, (White, J.), (a) that prior to the Act of Feb. 19, 1903, authority did not exist for bringing the present suit;

(b) that the Act of Feb. 19, 1903, was made expressly applicable to pending proceedings and gave authority for the prosecution of the present proceedings.

Decree reversed and cause remanded to Circuit Court for further proceedings in conformity with this opinion.

Harlan and Brewer, J. J., dissented as to jurisdiction prior to the Act Feb. 19, 1903, holding that Sec. 12 as amended gave such authority, and also (seemingly) that the power existed in the courts irrespective of direct authority contained therein.

188-A.—Parsons v. Chicago & N. W. R. Co. 63 Fed. 903; 5 Int. Com. Rep. 95; 11 C. C. A. 489; 27 U. S. App. Rep. 394; C. A. 8th Circuit. (Sept. 24, 1894.)

Error to C. C. S. D. Ia., sustaining demurrer to action for damages for undue preference and violation of Sec. 4 in charging complainant a higher rate from Carroll, Ia., to Chicago than was charged shippers from more distant Nebraska points to Rochelle, Ill., a point on the line to Chicago.

Defendant, together with other carriers, had filed a rate from the Nebraska points to Rochelle of 11c. per 100 pounds on earload corn and oats to apply on through freight to the coast. The rate from Carroll to Chicago was 19c. It was alleged that this was a mere device to evade the Act and that the grain from Nebraska was really intended for Chicago for sale or delivery to eastern carriers. It was also alleged that the 11c. rate was not filed or published.

Held, (Thayer, C. J.), (a) that the 11c. rate being part of a joint through rate was no proper test of the legality of a local rate between the same or intermediate points;

(b) that no sufficient facts were alleged to support the allegation that this was a mere device;

(c) that the allegation of the non-filing of the rate did not make the declaration valid.

Judgment affirmed.

188-B.—Parsons v. Chicago & N. W. R. Co. 167 U. S. 447; 17 S. Ct. Rep. 887. (May 24, 1897.)

Appeal from C. C. A. 8th Circuit.

Held, (Brewer, J.), (a) that there being no averment that the rate charged was unreasonable, complainant's right to recover was purely statutory, in the nature of a penalty, and requiring strict proof to support it;

(b) that a part of a through rate might legally be less than a local rate between the same or less distant points;

(c) that the allegation of a "device" was not sufficiently clear to make out a case;

(d) that one claiming damages from discrimination must show clearly that he has been injured, which complainant had not done by averring defendant's failure to file or post the through rates, as it did not appear that if he had known of them he would have shipped beyond Chicago.

Judgment affirmed.

189.—St. Louis Drayage Co. v. Louisville & N. R. Co. 65 Fed. 39; 5 Int. Com. Rep. 137; C. C. E. D. Mo. E. D. (Dec 17, 1894.)

Action by carrier for damages for discrimination in making through routes and rates with a rival carrier, while refusing to do so with complainant.

Defendant's line ran east from East St. Louis and complainant and the St. Louis Transfer Co. were both engaged as common carriers from St. Louis to East St. Louis. In 1881 defendant had made a contract with the St. Louis Transfer Co., under which it was still acting, whereby it transported freight tendered it by that Company at its East St. Louis rate, paying the Transfer Company its regular rate, and absorbing it, while on freight tendered by complainant the shipper was obliged to pay complainant's charge in addition.

Held, (Philips, D. J.), (a) that the Act gave the Courts no power to require a railroad to enter into an arrangement for a through route with another road;

(b) that defendant might, under the Act, make such an arrangement with one connecting carrier without being obliged to make a similar one with others similarly situated.

Judgment accordingly.

190.—Emerson v. Chicago, R. I. & P. R. Co., et al. 6 I. C. C. Rep. 289. (1895.)

Complaint of discrimination in passenger rates between certain denominations of ministers.

Complainant was a spiritualist minister and applied for reduced rates, which were refused to him on the ground that he did not present proper credentials, and that under Sec. 22 of the Act a railroad was entitled to discriminate between denominations of ministers.

Held, (Veazey, C.), that as the complainant had not presented proper credentials he was entitled to no relief, and the Commission need not decide the second question presented.

Complaint dismissed.

191-A.—Truck Farmers' Ass'n. of Charleston v. Northeastern R. Co. of S. C., et al. 6 I. C. C. Rep. 295. (April 6, 1895.)

Complaint of unreasonable rates (both for transportation and for refrigerator car charges) on strawberries and fresh vegetables from Charleston, S. C., to New York.

This traffic was confined practically to the months of April and May and required special service. Considerable evidence was offered as to the cost of service, of ice in the refrigerator cars, ferriage charges between Jersey City and New York, etc., and also of the cost of growing and shipping strawberries and vegetables. The terminal for these articles had recently been changed from New York to Jersey City, with a reduction of 2c. per 100 pounds, on strawberries, but none on certain vegetables. The rate on cabbages was complained of as unreasonable compared with that on potatoes. Cabbages were only half as valuable per barrel as potatoes, and were but three-quarters as heavy, and hence occupied more space for the weight carried. The rate on cabbages from Norfolk was 17c. per

100 pounds, and on potatoes 25c., but from Charleston the rate on each was 61c. The refrigerator cars used were hired by the defendants from certain Car Companies and for the ice used in them defendants charged the shipper 2c. per 100 pounds in addition to the rate.

Held, (Clements, C.), (a) that where a railroad rented cars from others paying mileage for their use, it was the railroad, and not the Car Company which furnished the car to the shipper and there was no privity of contract between the shipper and the Car Company;

(b) that a railroad was bound, as a common carrier, to furnish adequate and essential facilities incidental to the service rendered, and ice for strawberries being a necessary incident "in connection" with such service, the rate for ice was within the terms of the Act and under the supervision of the Commission;

(c) that the 2c. charge for ice was unreasonable and 1½c. was sufficient;

(d) that the rate on cabbages should be but three-fourths that on potatoes;

(e) that on articles formerly taken to New York but now to Jersey City only, the former rate to New York should be reduced by 1.4c. per 100 pounds, as the long continued rate to New York was *prima facie* reasonable, and the 1.4c. per 100 pounds was saved by discharging the freight at Jersey City.

Order accordingly.

191-B.—Interstate Commerce Commission v. Northeastern R. Co., et al. 74 Fed. 70; 5 Int. Com. Rep. 650; C. C. D. So. Car. (April 30, 1896.)

Motion to dismiss bill to enforce order of Commission issued in above.

This order required defendants to desist from charging more than certain specified rates on certain vegetables from Charleston, S. C., to New York and Jersey City.

Held, (Simonton, C. J.) that the order in question was one fixing maximum rates, which the Commission had no power to do, and was, therefore, not a lawful order and unenforceable.

Bill dismissed.

Affirmed by C. C. A. 4th Cir., 83 Fed. 611 (Nov. 3, 1897), in opinion by Goff, C. J., adopting that of Simonton, C. J., above.

192.—Petition of Cincinnati, Hamilton & Dayton R. Co., et al. 6 I. C. C. Rep. 323. (Oct. 3, 1893.)

Application for relief under Sec. 4 in respect to passenger rates.

In taking passengers to the World's Fair at Chicago, the petitioning road desired to charge a less rate from Lima, Ohio, than from Dayton, a point nearer Chicago, because of the presence of the short line of the Penna. R. R. from Lima, whose rate the petitioning road desired to meet over its more round-about line.

Held, (Morrison, C.), that in such cases the Commission was free to exercise its discretion and that the case was a proper one for relief.

Order accordingly.

193.—Application of Rome, W. & O. R. Co., et al. 6 I. C. C. Rep. 328. (Oct. 3, 1893.)

Petition for relief from operation of Sec. 4 as regards passenger rates to Chicago during the World's Fair.

Petitioner's regular return passenger rate from points east of Richland, N. Y., was \$36.00. During the World's Fair the Canadian Pacific put in force a \$24.00 rate from these points, which was lower than petitioner's regular rate from Syracuse, N. Y. (\$25.75), a less distant point which the Canadian Pacific did not touch.

Held, (Morrison, C.), that in view of the fact that the increase of traffic demanded the use of all roads during this period for the good of the public, the relief would be granted during the continuance of the fair.

194.—Butchers' & Drovers' Stockyards Co. v. Louisville & N. R. Co. 67 Fed. 35; 14 C. C. A. 290; 31 U. S. App. Rep. 252; C. C. A. 6th Circuit. (Feb. 5, 1895.)

Appeal from C. C. M. D. Tenn., dismissing bill for injunction to compel defendant to build, or allow to be built, a spur track for the delivery of live stock.

Defendant had built a side track with spurs to the warehouses and yards of certain coal and of certain merchandise shippers. This was within 40 feet of complainant's yards, but to handle live stock on such a switch was a great deal more difficult than in case of dead freight, because of the necessity of prompt handling of the former. Defendant delivered its live stock through the Union Stockyards, whose facilities were ample and which made no charge for delivery, making a charge only where the cattle were left for two hours or more.

Held, (Taft, C. J.), (a) that as between live and dead freight the circumstances and conditions were so different as to justify defendant in refusing a spur track to complainant;

(b) that there was no undue discrimination shown as regards the Union Stockyards Co., the fact that no extra charge was made for delivery through these yards distinguishing the case from Stockyards Co. v. Keith, (123.)

Decree affirmed.

195.—Gulf, Colorado & Santa Fe R. Co. v. Hefley. 158 U. S. 98; 15 Sup. Ct. 802. (April 29, 1895.)

Error to Co. Ct. Milan Co., Texas.

Appeal from judgment for penalty under State Statute for withholding goods after tender of freight specified in the bill of lading.

The shipment in question was from St. Louis, Mo., to Cameron, Tex. The bill of lading specified a rate of 69c. per 100 pounds, but the rate in the printed tariff posted at Cameron was 84c., and the agent refused to accept the 69c. rate tendered.

Held, (Brewer, J.), (a) that the Texas Statute was in conflict with the Interstate Commerce Act, and, therefore, unconstitutional; (b) (semble) that a carrier might not by contract establish rates different from those filed and posted.

Judgment reversed.

196.—**Michigan Box Co. v. Flint & P. M. R. Co., et al.** 6 I. C. C. Rep. 335; 3 Int. Com. Rep. 662. (July 24, 1895.)

Complaint of unreasonable rates on box shooks compared with those on lumber and shingles, of preference of the latter and demand for reparation.

Up to 1890 the rate from Bay City, Michigan, to certain New York points was 12c per 100 pounds on lumber, shingles and box shooks, (the boards from which boxes are made), but the rate on box shooks was then raised to 15c. Lumber loaded more weight per car and a carload was considerably more valuable than box shooks. The freight per car on lumber and shooks was about the same (\$43), and on shingles about \$36. Water competition was alleged as justifying a lower rate on lumber, but it appeared that in other places where such competition would be as great a factor as here the same rate existed as to both lumber and box shooks. Before the decision of this case, defendants conceded the relief asked and reduced the rate on shooks to 12c. Damages were claimed for loss of business during the maintenance of the 15c. rate, and for the excess of 3c. on shipments made, but no proof of damages was made.

Held, (Morrison, Ch.), (a) that there appeared to have been an unreasonable preference against box shooks but in view of the voluntary reduction of the rate no order would issue;

(b) that the case be held open for 10 weeks to give complainant an opportunity to prove damages actually suffered at the former rate.

197.—**Hill & Brother v. Nashville C. & St. L. R. Co., et al.** 6 I. C. C. Rep. 343. (Oct. 19, 1895.)

Complaint of preference of Albany and Americus, Ga. over Cordele, Ga., in rates from Nashville, Tenn.

By short line Nashville was less distant from Americus and more distant from Albany than from Cordele. On defendant roads Cordele was a nearer point on the way to Americus. Rates to the three points were made on the trade centre or basing point system, the Cordele rate being made up of the best combination to the nearest basing point with the local from there to Cordele added. Americus and Albany were both basing points. The short line road to Albany (not a party here) did not run through Cordele, but defendant's line to Albany did.

Held, (Morrison, Ch.), (a) that the fact that a direct line ran to Albany or Americus without passing through Cordele did not warrant defendants, who did pass through Cordele en route to Americus or Albany, in charging a greater rate for the less distance, although such fact might form the basis for relief by the Commission on application;

(b) that the basing point system should again be condemned by the Commission and defendants should charge no higher rate to Cordele than to Albany or Americus.

198.—*Cordele Machine Shop v. Louisville & N. R. Co., et al.* 6 I. C. C. Rep. 361. (Oct. 19, 1895.)

Complaint of violation of Sec. 4, by the use of the basing point system in the south.

The defendants were members of the Southern Railway & Steamship Ass'n. The rate from Birmingham, Ala., to Macon, Americus and Albany, basing points or trade centres, more distant points than Cordele, Ga., was lower by the local rate from those points to Cordele. There was a shorter line to some of the basing points. The defendants sought to justify the high Cordele rate by explaining the manner in which the rates in question had been originally fixed.

Held, (Morrison, Ch.), (a) that although the short lines had the advantage, this did not justify the longer lines in violating Sec. 4;

(b) that the manner in which the rate situation had been established did not concern the Commission, which looked only at existing conditions;

(c) that the trade centre or basing point system of making rates was illegal and produced preferences and discriminations, and was now again condemned by the Commission.

Ordered that rates to Cordele be reduced to those to Albany and Macon.

199.—*Rice, Robinson & Witherop v. Western N. Y. & P. R. Co.* 6 I. C. C. Rep. 455. (Dec. 2, 1895.)

Supplemental petition for reparation for unreasonable rates on oil, and for discrimination in favor of shippers of oil in tanks over those in barrels.

This case had been decided in 1888, re-opened in 1889 in connection with the cases of Independent Refineries Ass'n. of Titusville v. Western N. Y. & P. R. Co., (155-A-B-C), an order having been entered in 1890, after the hearing but before the decision in the above cases, to the effect that defendants cease charging for the weight of the barrels in barrel shipments. This order was obeyed by the roads, but in 1893, after the decision in the Titusville cases, (155-A), complainant filed a petition for reparation.

Held, (By the Commission), that in view of the length of time which had elapsed since the entry of the final order in these cases, and in view of its obedience by defendant, it would both be unwise as

a matter of practice and unjust to defendant to amend the final order.

Petition dismissed.

200.—**Daniels v. Chicago, R. I. & P. R. Co., et al.** 6 I. C. C. Rep. 458; 4 Int. Com. Rep. 110, 111. (Nov. 16, 1895.)

Complaint of preference of Sioux City over Sioux Falls in rates from Chicago, Duluth and the east.

Complainant represented Sioux Falls merchants. The short line distance from Chicago to Sioux City was 37 miles less than to Sioux Falls, but from Duluth it was 78 miles greater. The distance from Chicago to Sioux Falls was 108% of that to Sioux City. Prior to 1890 rates to Sioux Falls were 108% of those to Sioux City. The rates were then made the same to both points and were continued so for five months, when they were put on the 108% basis again. The rates from Duluth bore the same proportion to one another as those from Chicago, but were much higher, so that no traffic went via Duluth. To points between Sioux Falls and Sioux City, Sioux City had some advantage in rates. Only one of the defendants, the Chicago, Milwaukee & St. Paul, served both Sioux Falls and Sioux City from Chicago over its own rails, the other defendants all running to one of the points and joining with other roads as to the other point. The roads east of Chicago were not parties to the proceedings. Sioux City was and for some time had been grouped as a Missouri River point.

Held, (Knapp, C.), (a) that in holding that a proportion of a through rate could not be compared with a local rate, the expression of opinion by the Circuit Court of Appeals (70-D, 138-C), that individual local rates were not to be compared with aggregate joint ones, was mere dictum, with which the Commission could not agree, since under Sec. 4 it was necessary in all cases to make such a comparison;

(b) that rates should not be arranged strictly on a mileage basis, as the rate per mile should decrease as the distance increased;

(c) that the word "line" in the Act meant a physical line and not a mere arrangement;

(d) that the fact that Sioux Falls was prospering under the system of rates in force was not conclusive against her, since she was entitled to her rights under the law, and to her geographical advantages;

(e) that a relation of rates might be proper in its inception and become improper as new railroads were constructed;

(f) that the rate to Sioux Falls should not be more than 104% of that to Sioux City; and from Duluth the rate to Sioux Falls and Sioux City should be the same;

(g) that the roads east of Chicago were not necessary parties as the through rates to the Atlantic Seaboard were not here challenged;

(h) that "where carriers have maintained for a considerable period a relation of rates affecting an extensive territory though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent on the continuance of that relation, it would be inexpedient to increase rates at that point as a means of correcting relative injustice to another locality and in such case the only practicable remedy is to reduce rates to the injured town." (p. 483.)

(i) (semble) that if traffic had been moving from the east via Duluth, the Commission would probably not have disturbed the existing relation of rates between the Chicago and Duluth routes.

Order accordingly.

201-A.—Colorado Fuel & Iron Co., et al. v. Southern Pacific Co. et al. 6 I. C. C. Rep. 488. (Nov. 25, 1895.)

Complaint of unreasonable rates on steel rails and iron from Pueblo, Col., to the Pacific Coast.

Complainant had an extensive plant, employing 5,000 men, owning its own coal and iron mines and coke ovens, and was a great factor in developing the State. The rate on steel rails to San Francisco was \$1.60 per 100 pounds, that from Chicago and Missouri and Mississippi River points 60c., from New York the same, and from Pittsburg, 70c. The distance from Pueblo to San Francisco was 64% of that from Chicago, 54% of that from Pittsburg, and 46% of that from New York. From New York there was strong water competition. Complainant asked for a rate of 40c., which would have given the western railroads a larger return than they received as their proportion of the through haul. It appeared that the Southern Pacific encouraged traffic via New Orleans and opposed low rates from Colorado so as to secure for itself a longer haul over its own rails. Defendants offered to grant lower rates from Pueblo, provided they be allowed to keep up rates, in spite of Sec. 4, from points west of Pueblo. Complainant's expenses were greater and its natural advantages less than those of eastern manufacturers.

Held, (Clements, C.), (a) that the present case was not a case of an application for relief under Sec. 4, and the Commission could only grant such relief on investigation, after the application required by the statute;

(b) that the offsetting of natural advantages by lower rates was not the province of the Commission, nor the purpose of the Act;

(c) that a long haul should be at a lower rate per mile than a short one, but not so much so as to produce an undue discrimination;

(d) that the water competition justified low rates from New York, but not the great disparity existing between the Pueblo rate and that from interior points;

(e) that rates on iron should not average as high as those on other articles;

(f) that the action of the Southern Pacific in attempting to secure long hauls for itself by discrimination against Colorado manufacturers was indefensible;

(g) that neither the fact of the complainant's large business, nor the fact that it produced railroad material entitled it to special advantages;

(h) that the rates in question were unreasonable and should be reduced to 45c. or 75% of the Chicago rate;

(i) that the method of publishing rates by some of the defendants disclosed in the evidence,—the basis for calculating being merely indicated with complicated amendments to tariffs, requiring an expert to decipher them,—was not a compliance with Sec. 6, which required that a definite rate be clearly stated.

Order accordingly.

201-B.—Interstate Commerce Commission v. Southern Pac. Co., et al. 74 Fed. 42; C. C. D. Colo. (May 12, 1896.)

Bill to enforce order issued in foregoing.

The Southern Pacific Company filed a plea to the jurisdiction of the Court, alleging that its principal office was in Kentucky, and that it had not committed any violation of the order of the Commission in the District of Colorado. The bill averred, however, that the defendants were operating under a common control, management and arrangement for a continuous carriage or shipment between Pueblo, Col., and San Francisco, Cal., and that the violation of the order happened in the District of Colorado.

Held, (Hallett, D. J.), that as defendants were operating under a common arrangement, the act of one in this district was the act of all.

Plea overruled.

201-C.—Colorado Fuel & Iron Company v. Southern Pacific Company, et al. 101 Fed. 779; C. C. A. 8th Circuit. (1900.)

Appeal from order of C. C. D. Col., enjoining the defendants, on petition of the Commission to enforce its order in the above case, from charging on certain commodities from Pueblo to the Pacific Coast more than 75% of the rates charged from Chicago or more than a certain specific rate in any case, and also enjoining them in general from violations of the Interstate Commerce Act.

Held, (Thayer, C. J.), (a) that the Commission had no power to fix maximum rates and that it might not do so in effect by prescribing a rate from Pueblo having a definite relation to that from Chicago;

(b) that an order in the general terms of the Interstate Commerce Act, which did not forbid the doing of any specific acts, would not be upheld, since it would merely leave the questions of reasonable rates or discrimination to be tried in contempt proceedings instead of before a Court and jury.

Decree reversed with order to dismiss the appeal.

202.—**United States v. Hanley, et al.** 71 Fed. 672. C. C. N. D. Ill. (Jan. 20, 1896.)

United States v. Morris.

United States v. Thompson.

United States v. Jenkins.

Motions to quash indictments against railroad agents for giving rebates and discriminations, and against certain shippers for false billing, etc., under Sec. 10, and against the railroad agents for receiving less than published rates.

The indictments alleged that defendant shippers received rebates after having paid full rates, but did not allege that other shippers did not also receive the same rebates. These same facts were relied on in all the counts under Sec. 10. The days on which the shipments were made were not specified, nor was it alleged that when the shipments were made it was intended to demand and receive less than the published rate.

Held, (Grosscup, D. J.), (a) that the indictment under Sec. 2 was defective in not alleging that other shippers were required to pay more than those specified;

(b) that the mere giving or receipt of a rebate did not constitute an offense under Sec. 10, as regards either carriers or shippers;

(c) that the indictment against the carrier's agents for receiving less than scheduled rates was valid;

(d) that the latter indictment was not invalid because the days on which the shipments were made were not alleged, or because of failure to allege an intent at the time of shipment to receive less than the regular rates.

Order accordingly.

203.—**Evans v. Union Pac. R. Co., et al.** 6 I. C. C. Rep. 520. (Feb. 8, 1896.)

Complaint of unreasonable wheat rates from Walla Walla, Wash., to Portland, Ore.

The 23½c. rate ordered in 176 and 179 *supra*, had been made applicable only to "the present grain season." Complainant now asked to have the rate reduced to 12¼c. Complainant presented evidence showing the cost of raising wheat and the possible profits at the present rate. The stations along the defendants' line had been placed by them in groups, Walla Walla being at the extreme near end of a group, the rate to which was 21¼c. The shipper paid the expense of loading in addition to the rate. It appeared that one of the defendants had been put in the hands of a receiver since the complaint was served, that it had not recently paid interest on its bonds, that many cars were returned from Portland empty, and that there was considerable expense from snow storms, but that the haul in question was over easy grades and that the average receipts above expenses were considerably higher than those of other railroads in

the United States. Rates on other commodities had been reduced since 1887 to a much larger extent than those on wheat, also competition had arisen.

Held, (Yeomans, C.), (a) that prior leave of a Court which had appointed a receiver was not necessary to entitle a shipper to proceed against him before the Commission, since a receiver was a common carrier within the meaning of the Act;

(b) that the rates over one road were not a proper basis of comparison with those over another until the conditions on each were shown to be substantially similar, as was not the case here;

(c) that grouping of shipping points in regard to rates was proper under special circumstances, but should be so arranged as to be fair to all shippers;

(d) that Walla Walla in the present case should be in a nearer group with a rate of $19\frac{1}{2}c.$, and that the $21\frac{1}{4}c.$ group should begin 30 miles west of Walla Walla;

(e) that as the rates charged were in accordance with the order of the Commission in 1887, no reparation should be allowed.

Order accordingly.

205.—Augusta Southern R. Co. v. Wrightsville and T. R. Co. 74 Fed. 522; C. C. S. D. Ga. N. D. (April 18, 1896.)

Application for mandamus under Sec. 10 of Act of March 2, 1889, to require defendant to transport freight over its line for complainant at the same rate charged a rival road.

Both complainant's and defendant's lines were situated wholly within the State of Georgia, but both were engaged in hauling through interstate traffic in connection with other roads. Complainant and the Central of Ga. R. Co. ran south to Tennille. The Central there had a physical connection with defendant's line. Complainant ran within 300 yards of defendant's line and connected by means of the track of the Central, the latter being willing to perform the switching service. The defendant's road ran south 36 miles connecting with other railroads and water lines at Dublin. Prior to 1895 defendant had hauled freight for both the complainant and the Central for \$2.40 per ton. After that date it continued the arrangement with the Central, but discontinued it with complainant, refusing to transport freight for less than \$2.70, this being the full State local rate allowed. The Central owned the majority of defendant's stock, but the latter's answer alleged that the Central did not control it. The Central was a much larger and more powerful road than complainant. It would seem that complainant did not ask that defendant be required to enter into a through route with its road.

Held, (Speer, D. J.), (a) that both the complainant and the defendant were engaged in interstate commerce;

(b) that through bills of lading were not necessary for the interchange of freight by connecting lines and defendant might be pro-

hibited from charging unreasonable and discriminating rates to defendant on interstate shipments;

(c) that the rates fixed by the State authorities for local shipments were not necessarily reasonable when applied as a part of through shipments, and were not reasonable in this case;

(d) (semble) that if the Central of Georgia Railroad objected, or if it had appeared that it controlled defendant, the case might be different.

Order inhibiting defendant from charging complainant more than it charged the Central of Georgia Railroad, and requiring it to afford equal facilities in interstate shipments to complainant and defendant.

207.—**Johnston-Larimer Co. v. Atchison, T. & S. F. R. Co., et al.**
6 I. C. C. Rep. 568. (May 12, 1896.)

Complaint of unreasonable rates between Wichita, Kas., and Texas points, of preference of Kansas City, a city more distant than such points, and of violation of Sec. 4.

Kansas City, a Missouri River point, was 200 miles more distant from Texas than Wichita, but rates to Wichita were about twice as high as to Kansas City. Defendant's main line to Kansas City passed through Wichita, but there was a cut-off around Wichita over which freight could pass on to Kansas City without going through Wichita, saving 20 miles. The published tariffs were very complicated, full of amendments, and puzzling cross-references. In some cases it was possible to have combination rates from Texas points to Wichita on St. Louis or Kansas City, which were lower than the through rates to Wichita, but the majority of the Wichita rates were slightly less than the combination rates on Kansas City. The cost of transportation to both points was about the same, but there was greater competition at Kansas City.

Held, (Yeomans, C.), (a) that the fact of there being a possible cut-off around Wichita did not affect the application of Sec. 4 to this case, as to freight going through Wichita;

(b) that under Secs. 2, 3 and 4 the rates to Wichita should not exceed those to Missouri River points;

(c) that defendants should revise their tariffs so as to make them easily intelligible to the ordinary reader.

Order accordingly.

208-A.—**McClelen, et al. v. Southern Ry. Co., et al.** 6 I. C. C. Rep. 588. (June 6, 1896.)

Complaint of preference of Anniston, Ala., over Piedmont, Ala., in rates from the north, and of violation of Sec. 4.

Rates to Piedmont exceeded those to Anniston by about 10%, although the latter point was 15 miles more distant on the same line. At Anniston there were competing roads which did not run to Piedmont.

Held, (Yeomans, C.), (a) that the rule of Sec. 4 was merely a specific instance of an undue preference on which Congress had wished to lay special emphasis;

(b) that although the competition of railroads subject to the Act might form the basis for an application by a road for relief under Sec. 4, it did not justify such road in making an exception to that section on its own responsibility.

Order accordingly.

208-B.—Interstate Commerce Commission v. Southern R. Co., et al. 105 Fed. 703; C. C. N. D. Ala. S. D. (Nov. 3, 1900.)

Bill to enforce order of Commission issued in above requiring defendant to cease from exacting higher rates from northern points to Piedmont, Ala., than to Anniston, Ala., a more distant point on the same line.

The Commission had refused to consider the competition at Anniston among roads subject to the Act, holding that this did not excuse an exception of Sec. 4 by the road on its own responsibility, although it might justify such an exception on application to the Commission.

Held, (Bruce, D. J.), (a) that under the decisions of the Supreme Court the competition of carriers subject to the Act was very important in determining whether or not the circumstances and conditions were similar;

(b) that as the order of the Commission was based on an error of law, the petition would be dismissed without prejudice to the right of any party in interest to proceed further before the Commission.

Order accordingly.

209.—Van Patten v. Chicago, M. & St. P. R. Co. 74 Fed. 981; C. C. N. D. Ia. W. D. (June 10, 1896.)

Action for overcharges against a Wisconsin corporation operating a line in the northern district of Iowa. Submitted on question of jurisdiction.

At the time the Act was passed (1887) a corporation might be sued in the Federal Courts in the District of its residence, or wherever it was properly served. The Judiciary Acts of 1887 and 1888 restricted this to the court of its residence. The Interstate Commerce Act gave jurisdiction to any District or Circuit Court of competent jurisdiction.

Held, (Shiras, D. J.), (a) that the Interstate Commerce Act was not affected by the Judiciary Acts, and that an action of the present nature was maintainable either in the district of defendant's residence or in any one where it was doing business;

(b) (semble) that the jurisdiction of the Federal Court and Commission over the award of damages under the Act, was exclusive.

210.—Hill Cotton Co. v. Missouri, K. & T. R. Co. 6 I. C. C. Rep. 601. (May 30, 1896.)

Complaint of unreasonable cotton rates from Eufaula, I. T., to St. Louis, of preference of Wagoner, I. T., and of Denison, Texas, more distant points, and violation of Sec. 4.

Denison was 120 miles (about 25%) more distant than Eufaula on the same line. The rate from Eufaula was 80c., and that from Denison 75c. From 1890 to 1892 these rates were 65c. and 60c. per 100 pounds, though cotton was then more valuable and the roads poorer equipped and hence more expensive to operate. Almost all of defendant's rates had of late years been greatly lowered, except cotton rates to a few points. At Wagoner, near Eufaula, a bale was estimated by the roads at 500 pounds in every case, while at Eufaula it was estimated at 535 pounds. Defendants alleged that at Denison there was a cotton compress and that it was necessary for it to take all Eufaula cotton there to compress it before sending it on to St. Louis, so that Eufaula was really the more distant point. It also claimed the right to charge what the traffic would bear, and contended that Eufaula rates must necessarily be reasonable, because all the cotton raised there was shipped under them.

Held, (Morrison, C.), (a) that the practice of estimating bales at different weights at different localities was a clear preference against Eufaula;

(b) that the fact that the compress was at Denison was a circumstance of defendant's own creation and hence not a sufficient justification for an exception to Sec. 4;

(c) that the reduced price of cotton and decreased railroad operating expenses in late years justified a reduction in cotton rates, and that it was unreasonable to raise the rate on cotton while reducing it on other commodities;

(d) that a railroad with a heavy debt might be justified in charging high rates, but the burden should at least be distributed equally over all traffic;

(e) that the rate in question should not exceed 60c.
Order accordingly.

211.—*Lynchburg Board of Trade, et al. v. Old Dominion S. S. Co., et al.* 6 I. C. C. Rep. 632. (July, 1896.)

Demand for reparation by reason of unreasonable rates, during a given period, from Boston and New York to Lynchburg, Va., of preference of Knoxville, Tenn., a more distant point, and of a violation of Sec. 4.

Rates from the north to Lynchburg formerly averaged 50% of the rates to Knoxville, a point 335 miles more distant by defendant's line (150 miles by short line). By reason of a rate war, the Knoxville rate on defendant's line was suddenly reduced to 70% of the Lynchburg rate. Within a month the rate war ended, and the former Knoxville rate was restored. There was no application for relief, but complainants sued to recover the amounts paid by them in excess of the usual Knoxville rate. There was no water competition

at Knoxville. Lynchburg and Knoxville competed in the adjacent territory. The Lynchburg rate *per se*, was reasonable, and the temporary Knoxville rate resulted in loss to the railroads.

Held, (Knapp, C.), (a) that complainants were entitled to recover, the only competition at Knoxville being that of the railroads subject to the Act;

(b) that it was immaterial that the Lynchburg rate was reasonable, as it was relatively unjust to Lynchburg, especially since long standing relations of rates had suddenly been reversed.

Order accordingly.

212.—Omaha Commercial Club v. Chicago, R. I. & P. R. Co., et al.
6 I. C. C. Rep. 647. (Aug. 21, 1896.)

Complaint of rates to Omaha from the south and west, and of preference of Kansas City and Davenport.

The rates to Omaha from Texas points were higher than those to Kansas City, which was 195 miles nearer such points on the direct line. Rates to Omaha were also in some cases higher than to Davenport, 140 miles further on toward Chicago. From the west, rates to Kansas City were same as to Omaha, but from the west these cities were not on the same line. In the three railroad groups (Missouri River territory, Chicago territory, St. Louis territory), Omaha was not included, being off the main line. It had a differential of 5c. against it over Kansas City. No through rates were quoted on cattle via Omaha to Chicago. Although Texas cattle shippers were given a stoppage-in-transit privilege via Kansas City to Chicago, none was given via Omaha. The Kansas City rates were admittedly reasonable. The rate to Kansas City on hogs from Southern Nebraska was the same as that to Omaha, while on Kansas hogs the rate to Kansas City was lower than that to Omaha; but from Nebraska the hauls to Kansas City and Omaha were over different lines, while from Kansas City they were over the same lines. Complainants asked that the Kansas City rate from Nebraska be raised so as to give Omaha the same advantage as regards such shipments, as Kansas City had on shipments from Kansas.

Held, (Clements, C.), (a) that the advantageous geographical position of a city entitled it to an advantage in rates;

(b) that the fact that the rates from the west were the same to Kansas City and Omaha did not entitle Omaha to the same rate as Kansas City from the south, since from the west the cities were not on the same line, while from the south they were, with Kansas City 195 miles nearer;

(c) that without passing on the legality of the stoppage-in-transit privilege via Kansas City, if such privilege was accorded Kansas City, it was an unlawful preference to refuse it to a rival city;

(d) that the 5c. differential against Omaha in favor of Kansas City was reasonable in view of the increased distance;

(e) that the Commission had no power to raise the rates on hogs

from Nebraska to Kansas City, and that the rate was not unreasonable;

(f) that from Texas the Omaha rate should not be higher than that to Davenport.

Order accordingly.

213.—Interstate Commerce Commission v. Bellaire, Z. & C. R. Co.
77 Fed. 942; C. C. S. D. Oh. E. D. (Jan. 11, 1897.)

Application for mandamus to compel filing of annual report; on taxation of costs for failing to obey the writ.

Defendant's line was wholly in Ohio. It never carried goods on through bills of lading; when freight came from another carrier to a point on its line or beyond, it always issued its own bill of lading, refusing to receive freight on a through bill issued by another company. On its own bill was marked, however, the name of the consignee and the destination of the freight, but this bill of lading was limited to its own line. There was no conventional division of charges.

Held, (Sage, D. J.), (a) that although, since defendant carried freight destined for points beyond the State in which it was located, Congress might have made defendant subject to the Act, the facts did not show such an arrangement as the Act contemplated;

(b) that the Act, being penal, should be strictly construed.

Defendant held not liable for the costs.

214.—Re Grain Rates of Chicago G. W. R. Co., et al. 7 I. C. C. Rep. 33. (Jan. 26, 1897.)

Investigation of grain rates between Kansas City and Chicago, on informal complaint.

The defendant operated a railroad between the above points. The President of defendant road had organized the Iowa Development Co., the stock in which was all owned by the railroad, and the officers and directors of which were the same as those of the railroad. The purpose of its organization was to buy grain on a large scale in Kansas City and sell the same in Chicago, the grain being transported by the railroad. The railroad took a draft on the Development Co. in payment for freight, there never having been any settlement with the railroad on such drafts until these proceedings were instituted, when the Development Co. paid the drafts, borrowing the money from the railroad. The whole was really a scheme by the railroad to secure the grain transportation, and since the company's organization, defendant had hauled 70% of all grain shipped, although five other roads competed for the traffic. The result of the transaction was that the railroad secured the profit on the grain as its freight rate, this profit varying greatly. The defendant alleged that the Development Co. was a distinct entity and that whether the defendant gained or lost indirectly through its stock ownership in the company, the Commission had nothing to do with the matter. It also contended

that it was defendant's grain and that it could transport it at such rates as it saw fit.

Held, (Prouty, C.), (a) that both justifications alleged by defendant were unsound and that the Development Co. was merely a "device" to evade the Act;

(b) that if the railroad owned the grain it was as a shipper and that it could not transport it at a rate less than that charged other shippers, or at less than appeared in the published tariff;

(c) that the case was distinguishable from the Haddock, (120), and Coxe, (124-A), cases, on the ground that in deciding those cases it was necessary for the Commission to meet conditions which arose before the Act, but that in the present case the conditions arose subsequent to the Act.

Order that defendant desist from transporting grain for any company owned or controlled by it at less than tariff rates, or at rates which were ultimately the profit on the grain, as set forth in the foregoing opinion.

215.—Wolf Bros. v. Allegheny Val. Ry. Co., et al. 7 I. C. C. Rep. 40. (Jan. 28, 1897.)

Complaint of unreasonable rate and classification of a particular species of envelope manufactured by complainant.

Complainants manufactured an article which they called a paper bag, but which was really a cheap envelope. Defendant classified this article as a merchandise envelope. Envelopes were rated 1st class C. L., and 3rd class L. C. L.; paper bags were rated 3rd and 5th class.

* *Held*, (Prouty, C.), (a) that no classification could be absolutely just;

(b) that the article, being made, used and shipped like an envelope, was properly classed as such.

Complaint dismissed.

216.—Rea v. Mobile & Ohio R. Co. 7 I. C. C. Rep. 43. (Feb. 24, 1897.)

Complaint of unreasonable rate and classification of certain vegetables from Verona, Miss., to St. Louis, of failure properly to post rates, and of refusal to ship by route designated, and demand for reparation.

Under the Southern Railway & Steamship Classification, beans were rated as second class (70c. per 100 pounds), and tomatoes as third class (44c.) Complainant alleged that both should be third class. Defendant posted a notice referring shippers to station agents for rates and did not post the rates themselves. Verona was the northern point of a rate group extending south a distance of 271 miles, Verona being 369 miles from St. Louis and taking the same rates as Prichard, 640 miles distant therefrom. Complainant had a contract to sell potatoes at Cleveland, Ohio, provided they came by the Big

Four route, but defendant had refused so to route them, although it had an established through route with this line.

Held, (Prouty, C.), (a) that the evidence was not sufficiently clear to warrant a finding with regard to the question of classification;

(b) that the above method of posting rates was not a proper compliance with Sec. 6, but that neither the complainant nor the public was injured thereby, and it was the only practicable method in this locality;

(c) that the above grouping was unreasonable as regards Verona, but that the evidence was not sufficient to determine what would be a proper grouping;

(d) that it was defendant's duty to send the freight here offered by the route designated by the shipper, and damages suffered by reason of its failure to do so should be awarded to the amount of \$100.00.

Order accordingly.

217.—*Boyer v. Chesapeake, O. & S. W. R. Co., et al.* 7 I. C. C. Rep. 55. (Feb. 27, 1897.)

Complaint of violation of Sec. 4.

The complainant, a Philadelphia merchant, alleged that defendant was charging a higher rate on cotton seed shipped from Dyersburg, Tenn., to Philadelphia, than from Memphis, 70 miles further south. Water competition was alleged as a defense. After the hearing defendant's line passed into the control of the Illinois Central R. Co. The latter was made a party, and answered that it had put into effect the same rate from both Memphis and Dyersburg, a lower rate than was asked. This was found to be a fact.

Held, (Morrison, C.), that no order was necessary.

218.—*Missouri Board of Railroad and Warehouse Comm'rs. v. Eureka Springs R. Co.* 7 I. C. C. Rep. 69. (Feb. 26, 1897.)

Complaint of unreasonable rate from Seligman, Mo., to Eureka Springs, Ark.

Defendant operated a line between the above points 18½ miles in length, of which 8 miles were in Missouri and 10½ in Arkansas. By an Arkansas statute, the maximum rate in that State was 5c. per mile on lines over 15 miles in length, and 8c. on lines under 15 miles. In Missouri the rate limit was 4c. per mile. Defendant's line was not exceptionally expensive to operate. During the past few years, although it was still solvent, its returns had been less than formerly. The rate charged by the defendant was \$1.85 through or 10c. per mile.

Held, (Morrison, C.), (a) that ordinarily the whole rate should not exceed that charged on all parts of a line, or, in this case, 82½c., but this was an exceptional case;

(b) that all charges over \$1.20, or 6½c. per mile, were, however, unreasonable.

Knapp, C., dissented, holding that a rate of 10c. per mile was reasonable.

219.—Willson v. Rock Creek Ry. of D. C. 7 I. C. C. Rep. 83. (Mar. 12, 1897.)

Complaint of discrimination by means of an illegal "device," in street passenger railway fares, by lower rates to patrons of a Land Company in which the owners of defendant were interested.

Defendant built an electric passenger railway from Washington, D. C., to the District of Columbia border, 5½ miles, and bought the railway of a Land Company in Maryland, for 2 miles farther. Originally, on each of the two roads the rate was 5 cents per ride, or 6 tickets for 25 cents. Later, for the whole way there were issued tickets with two coupons, at 10 cents per ticket, or 3 for 25 cents. The original rate was also maintained. The same person owned two-thirds of the stock of defendant and of the Land Company. The latter company sold a 10 cent ticket for 5 cents, or 6 of such tickets for 25 cents to those living on its land, or on the land purchased from it, but refused to sell at such price to complainant, who lived near the Land Company property. The Land Company paid the railroad the full price of the ticket.

Held, (Knapp, C.), (a) that an electric railway was within the Act, as was a carrier which ran between a Territory and a State;

(b) that the community of interest between the Land Company and defendant was not an illegal device to evade the Act;

(c) that the rates had not been shown to be unreasonable *per se*;

(d) that there was no discrimination by the railway as it received its full price from the Land Company, and any discrimination by the latter was not subject to the power of the Commission to correct.

Prouty and Yeomans, C. C., concurred in holding that there was no discrimination shown, but held that a street electric railway was not within the Act.

Complaint dismissed without prejudice.

Morrison and Clements, C. C., dissented, holding that street railroads were subject to the Act, and that the Land Company was merely an instrument of the railway by which it produced an illegal device resulting in discrimination against the complainant.

220.—Milk Producers' Protective Association v. Delaware, L. & W. R. Co., et al. 7 I. C. C. Rep. 92. (March 13, 1897.)

Complaint of unreasonable milk rate from points near New York and of preference of distant shippers by blanket rate.

Since the decision in *Howell v. N. Y., L. E. & W. R. Co.*, 2 I. C. C. Rep. 271, (59), the uniform or blanket milk rate into New York City had been extended farther up into New York State so that it

was 32c. per 40-quart can (50c. for cream), for distances of from 49 miles to 264 miles, and on some roads 411 miles. The price of land near New York had increased and the production of milk at near points was falling off, since with the blanket rate, more distant dairy-men could undersell those near at hand (other reasons also, see p. 152. For this traffic special service was required see *Howell v. N. Y., L. E. & W. supra.*) Two of the defendants had contracts with certain individuals, whereby the latter were paid 20% of gross receipts for securing and attending to the business. The service was very profitable to the roads and desirable to all lines. The rate on bottled milk was the same per quart as on that in cans (the bottle being carried free) although the package was 2 1-3 times heavier than milk in cans, and gave the roads 86% more revenue on actual dead weight hauled (more milk could be loaded in a car in bottles than in cans.) Certain of the defendants were situated wholly in New Jersey. The New York, Susquehanna & Western started and terminated in New York, going through part of New Jersey en route. It also appeared that certain milk shippers received passes.

Held, (By the Commission) (a) that the New York, S. & W. road was subject to the Act;

(b) that the suit was properly brought by complainant, there being no necessity of proof of direct damage to complainant where, as here, the real injured party was the community, of which complainant was a part;

(c) that to charge the same rate for a less than for a greater distance on the same line was not a violation of Sec. 4;

(d) that the giving of passes to milk shippers was a rebate by an illegal device;

(e) that although the allowance of 20% to individuals for developing the milk traffic appeared to be extravagant management, it was not the province of the Commission to interfere with such management, although needless expense incurred by roads was no justification of high rates;

(f) that the geographical advantage of a locality entitled it to an advantage in rates, and that the same rate to distant points here gave such points an undue preference;

(g) that a higher rate should be charged on milk in bottles than on that in cans, but that the amount of the difference would not be fixed definitely;

(h) that the territory should be divided into four groups (specified pp. 174-5), receiving rates of 23c., 26c., 29c., and 32c., according to distance from New York.

Order accordingly.

221.—*Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., et al.* 7 I. C. C. Rep. 180. (May 22, 1897.)

Complaint of preference of Louisville, Ky., over Cincinnati, Ohio, in rates to Southwestern Territory.

The differential against Cincinnati complained of was 2c. to 10c. per 100 pounds, varying with the class of the goods. Rates to south-eastern points were the same from both cities, these points averaging 15 to 20 miles nearer Louisville than Cincinnati, while the south-western points averaged about 100 miles nearer in a total haul of about 700 miles. It appeared that combination rates to the south-west from points north and east of Cincinnati via Louisville, were lower than via Cincinnati, but the roads north and east of Cincinnati were not parties to these proceedings and the difference in total rates might, under the facts proved, have been due to the variance in rates over such roads. Defendants set up as justifying the differential complained of: (1) that Cincinnati could afford to pay a higher rate to the south since it could get supplies from the north at cheaper rates than Louisville; (2) that Cincinnati had properly to pay a charge of 2c. by a bridge company crossing the expensive Ohio bridge; (3) that the distance from Cincinnati was greater.

Held, (Prouty, C.), (a) that a city was entitled to the benefits of its location and that exceptional geographical or natural advantages were not to be offset by discriminations in rates, but where such advantage lay in proximity to the markets in one direction there would result a corresponding disadvantage in respect to points in the opposite direction;

(b) that the bridge charge was a proper factor in fixing the relation of the rates in question;

(c) that in the absence of other conditions, distance should be a controlling factor in fixing rates, the rate to the more distant point being higher;

(d) that as the northern and eastern roads were not parties, the Commission would not pass on the combination rates via Louisville and Cincinnati;

(e) that since Louisville and Cincinnati were both rate centres, the relation of rates to which affected the whole surrounding territory, no change in such relation would be ordered by the Commission, unless entirely satisfied that a change was advisable, and such was not shown to be the case here.

Complaint dismissed without prejudice.

223.—*Wight v. United States*. 167 U. S. 512; 17 S. Ct. Rep. 822; 42 L. Ed. 258. Error to D. C. W. D. Pa. (May 24, 1897.)

Indictment for giving rebates.

Bruening had a beer warehouse at Pittsburg on the track of the "Pan Handle" Railroad, and beer coming from Cincinnati by that line was delivered at his warehouse on a siding. The Baltimore & Ohio Railroad Company depot was some distance away, and that road offered to do the carting for him free if he would ship via its line. This cost $3\frac{1}{2}$ c. per 100 pounds. Bruening afterward did the carting and the B. & O. R. Co., through defendant, paid him $3\frac{1}{2}$ c. per 100 pounds for it. The regular rate by each line was 15c. per 100

pounds, and other shippers by the B. & O. line who had no warehouses on the sidings of competing roads, were required to pay this rate.

Held, (Brewer, J.), (a) that competition with rival roads did not justify a discrimination between shippers;

(b) (semble) that the phrase "under substantially similar circumstances and conditions" as used in Sec. 4 might have a broader meaning than in Sec. 2;

(c) that this phrase in Sec. 2 referred to the matter of carriage and did not include competition.

Judgment affirmed.

224.—Mount Vernon Milling Co. v. Chicago, M. & St. P. R. Co.
7 I. C. C. Rep. 194. (May 28, 1897.)

Complaint of discrimination and preference of complainant's competitors in refusal to allow complainant a special switch or a location on its sidetrack.

Complainant had a flour mill and grain elevator at Mount Vernon, S. D. He applied for a location on defendant's land along its switch and was refused. He then built his mill nearby and asked that defendant construct a special switch for him. This defendant offered to do if he paid the expense (in accordance with a Dakota statute.) In 1884 defendant had put in a switch for one mill, which was still in operation, and in 1889 had paid part of the cost of another, but of late years it had agreed only to maintain switches constructed by the mill owners and not to build any more.

Held, (Yeomaas, C.), (a) that the evidence was not sufficient to show a discrimination;

(b) that to require defendant to give complainant a location on its land would be a taking of defendant's property without due process of law.

Complaint dismissed.

225.—Freeman v. Atchison, T. & S. F. R. Co., et al. 7 I. C. C. Rep. 202. (May 28, 1897.)

Complaint of unreasonable rates on potatoes from Cadillac, Mich., to Texas points.

The rate on potatoes (Class C) from St. Louis to Texas points was 54c. per 100 pounds, and that from Grand Rapids 66c., out of which the St. Louis-Texas roads received 49c. and the Grand Rapids-St. Louis roads 17c., the latter being the local rate from Grand Rapids to St. Louis. Grand Rapids was the most northern point in the "Detroit-Cleveland Territory" which enjoyed a 12c. differential over St. Louis in shipments to Texas points, and shippers from Cadillac, 98 miles north of Grand Rapids, were forced to pay the 23c. rate to St. Louis, plus the 54c. rate from there to Texas points, amounting to 77c. Complainant demanded either that the St. Louis-Texas roads receive a 49c. division of a rate from Cadillac, or else that a 6c. rate be put in force from Cadillac to Grand Rapids. While this

proceeding was pending the latter was done and complainant's claim for reparation was withdrawn.

Held, (Yeomans, C.), that without approving the shrinking system of rates here in force, since defendants had granted the relief asked for, no order would be made.

Complaint dismissed without prejudice.

226.—Kinnavey v. Terminal R. Ass'n. of St. Louis. 81 Fed. 802. C. C. E. D. Mo. E. D. (June 14, 1897.)

Demurrer to claim for damages for unreasonable rate, and for discrimination under Sec. 2 on coal shipments from East St. Louis to St. Louis.

The petition did not aver either that no rates were filed covering the shipments in question, or that the charges exacted were in excess of the rates filed. As regards the discrimination charge, the petitioner alleged that his coal was carried at 30c. per ton between the points named, and that during the same period defendant performed like service for the Consolidated Coal Co., a competitor, under substantially similar conditions, etc., for 25c. per ton.

Held, (Adams, D. J.), (a) that the petition was defective as regards the claim under Sec. 1 of the Act;

(b) that as regards the claim under Sec. 2, it was not defective, it not being necessary for the complainant to set out the facts relied on as rendering the service in the two cases alike, and it being immaterial whether or not more than scheduled rates were charged complainant.

Order accordingly.

227.—United States ex rel. I. C. C. v. Chicago, K. & S. R. Co. 81 Fed. 783; C. C. W. D. Mich. S. D. (June 23, 1897.)

Petition for mandamus to compel filing annual report.

Defendant's line was wholly in Michigan. It did business to and from other States on local bills of lading without any through arrangement, the traffic being hauled for connecting carriers just as for any other consignee.

Held, (Severens, D. J.), that the defendant was not subject to the Act and under no obligation to file an annual report.

Motion denied.

228.—Paine Bros. & Co. v. Lehigh Valley R. Co., et al. 7 I. C. C. Rep. 218. (June 24, 1897.)

Complaint of discrimination in favor of large grain shippers over small ones by lower ex-lake grain rates on cargo lots than on shipments in carloads, from Buffalo to New York.

Complainant was a shipper of grain from Milwaukee. Defendants' grain rates on "cargo lots" (10,000 bushels of oats and 8,000 bushels of other grain) ex-lake from Buffalo to New York, were ½c. to 1c., (about 10% to 25%) lower than their regular carload rates. De-

fendants contended that there was much stronger competition for cargo shipments than for smaller lots and that the cost of handling the large shipments was much less. At the hearing defendants offered to discontinue the differential as to all except export shipments, which removed complainant's principal grievance.

Held, (Knapp, C.), (a) that the wholesale principle of charging a less rate on large shipments than on small ones was contrary to the rule of equality, and to the purpose of the Act, and even if applied solely to exports, tended to furnish a temptation to shippers to manipulate large domestic seaboard shipments so as to get the low rates;

(b) that as the concession by defendants had removed the main ground of complaint, no order would be entered for the present, but the case would be held for such disposition as the future action of the parties interested warranted.

229-A.—*Brewer, et al. v. Louisville & N. R. Co., et al.* 7 I. C. C. Rep. 224. (June 29, 1897.)

Complaint of unreasonable rates from Louisville, Ky., and Cincinnati, Ohio, to Griffin, Ga., of preference of Macon, Ga., a more distant point, by lower rates thereto, and of violation of Sec. 4.

Rates to Griffin were about 40% higher than to Macon, although the latter point was 60 miles more distant by the same line. Macon and Atlanta were treated by defendants as basing points, Atlanta being 43 miles north of Griffin. Macon and Atlanta took the same rates, but those to Griffin were made by adding the local from Atlanta to the Atlanta rate. Five roads served Macon, and the two largest of these served Griffin. At Macon there was strong market competition, and also, some evidence of competition by water, but the latter was more potential than actual, since it has been suppressed by the very low rail rates.

Held, (Prouty, C.), (a) that there was no evidence as to the reasonableness, *per se*, of the Griffin rates;

(b) that the relation of rates in question produced a clear discrimination against Griffin and a violation of Sec. 4;

(c) that there was no competition by water at Macon which would justify these rates;

(d) that competition of markets and of railroads subject to the Act was no justification of a preference or of higher rates for the shorter distance, and if it were, the facts here showed such competition at Griffin as well as at Macon;

(e) that the necessity of earning a reasonable return on capital invested was no justification for a discrimination between localities;

(f) (semble) that potential water competition was not sufficient to justify a preference in rates, since the Act permitted railroads merely to meet water competition and not to extinguish it.

Order accordingly.

229-B.—Brewer, et al. v. Central of Ga. R. Co., et al. 84 Fed. 258. C. C. S. D. Ga. E. D. (Jan. 8, 1898.)

Petition to compel compliance with the order of the Commission issued in above, requiring defendants to cease charging higher rates from Ohio points to Griffin, Ga., than to Macon, Ga., in violation of Sec. 4.

The Commission had found that the Griffin rates were not shown to be unreasonable, and that those at Macon were forced down by competition.

Held, (Speer, D. J.), that no violation of Sec. 4 appeared. Complaint dismissed.

230.—Van Patten v. Chicago, M. & St. P. R. Co. 81 Fed. 545. C. C. N. D. Ia. W. D. (June 20, 1897.)

Demurrer to answer to petition for reparation for alleged unreasonable charges.

The answer alleged that the rates charged were those filed in accordance with the Act.

Held, (Shiras, D. J.), that the Act provided in the rates filed, a standard for determining the reasonableness of rates within the meaning of Sec. 1, and Courts and juries could not resort to any other standard.

Demurrer overruled.

231.—Re Grain Rates by Atchison, T. & S. Fe. R. Co., et al. 7 I. C. C. Rep. 240. (June 29, 1897.)

Investigation at instance of Commission.

At Kansas City a practice had been established of allowing grain to come in at local rates from near western points, to have a chance to try the market in Kansas City, and then go to ultimate destination, not at the rate between Kansas City and the point of destination, but at the balance of the through rate between the point of origin and the point of destination, deducting the local already paid. The practice grew up in order to help the Kansas City elevators, and because some roads originated at Kansas City, going east, and would thus get no traffic but for the above practice. The practice appeared to stimulate trading in "expense bills," (the accepted proof that a local rate had been paid), and to lead to fraud and discrimination.

Held, (Prouty, C.), (a) that the shipment from point of origin to Kansas City was a local shipment and not part of a through one;

(b) that charging a less rate than full local from Kansas City to the point of destination was illegal, and should be discontinued.

232.—Suffern v. Indiana, D. & W. R. Co., et al. 7 I. C. C. Rep. 255. (1897.)

Complaint of unreasonable maximum and minimum carload regulations for corn shipments, of insufficient publication of the same in the tariffs, of departure from tariff rates, of overcharges on corn shipments, and demand for reparation.

Complainant was a corn buyer at Decatur, Ill., and a shipper to other States. Defendant fixed a carload rate on corn of 7c. per 100 pounds, and of 13c. in less-than-carloads. In circulars filed with the Commission the minimum carload was stated in various ways, and there were other conflicting regulations. Complainant shipped several carloads. On one of these he had been charged a "penalty" for overloading, and on another a carload rate for a less load. He claimed the excess. The car capacities varied from 28,000 to 60,000 pounds. If the defendant had not the right size car, on application to the superintendent, a shipper could take the minimum on the car asked for, though receiving a larger car, but this took time and trouble, and was often a source of loss to a shipper on a declining market. It appeared that at some stations there were no track-scales, such scales being expensive.

Held, (Clements, C.), (a) that Sec. 6, requiring that rates be printed on posted schedules, and that all rules and regulations changing, affecting or determining such rates should be stated separately, meant stated separately on the schedule, and the issuance of circulars was not a sufficient compliance with this provision;

(b) that complainant was bound to consult only the schedule, which showed the real rate, and was not bound to search through the various circulars, or to inquire of agents;

(c) that the fact that circulars had been filed and had not been disapproved by the Commission was immaterial;

(d) that a proper maximum and minimum carload rule was proper, but the amounts should not be too near together, and should not vary with the size of the car;

(e) that complainant was entitled to the reparation prayed for;

(f) that the adoption of the regulations in question was such a change as require ten days' notice.

Order accordingly.

233-A.—U. S. ex rel Interstate Commerce Commission v. Seaboard R. Co. 82 Fed. 563. C. C. S. D. Ala. (July 2, 1897.)

Petition for mandamus to compel filing of annual report.

Defendant's road lay wholly in Alabama. Traffic between Fairford, Ala., and Chicago went via its line to and from Calvert, Ala. There was no through bill of lading. At Calvert the same agent represented both defendant and the connecting road, and issued way bills stating that the freight came from Fairford and giving the shipper's name. There was a filed tariff, agreed to by all the roads except defendant, and defendant received the share of the rate there provided for, which was equivalent to its local rate. On shipments from Chicago defendant collected the entire freight from the consignee, and retaining its share, passed the rest on to the next road. There was continuous shipment both ways.

Held, (Toulmin, D. J.), (a) that a through bill of lading was not

essential to a common arrangement nor need there be an express agreement;

(b) that such an arrangement might be implied from the circumstances stated.

Petition granted.

233-B.—U. S. ex rel Interstate Commerce Commission v. Seaboard R. Co., of Ala. 85 Fed. 955. (March 9, 1898.)

Motion for rule on former secretary and treasurer of defendant to show cause why he should not be committed for contempt in failing to obey mandamus requiring him to file an annual report.

In his answer respondent alleged that he did not have possession of the books necessary to get the required data, and that he had resigned and was no longer connected with the railroad.

Held, (Toulmin, D. J.), that under these circumstances the motion should be denied.

234.—United States v. De Coursey. 82 Fed. 302. D. C. N. D. N. Y. (Aug. 17, 1897.)

Demurrer to indictment for discrimination and departing from filed tariff rates.

Defendant had been appointed receiver of the Western New York & Pennsylvania Railroad in June, 1894. Prior to that date the road had filed a joint tariff on coal with the Allegheny Valley Railroad between certain points. After his appointment defendant did nothing to ratify or adopt this tariff, but accepted from the Fairmont Coal Co. a less rate than it provided for. The indictment did not give the particulars of shipments by Henry, the shipper required to pay the higher rate, but described particularly that for the Fairmont Co., and alleged that for the latter service a less sum was received than for a "like and contemporaneous service in the transaction of a like kind of traffic under substantially similar circumstances and conditions" for Henry.

Held, (Coxe, D. J.), (a) that the allegation in the indictment was sufficient;

(b) that as the receiver had not been a party to the tariff filed prior to his appointment, and had not ratified it thereafter, he was not liable for departing from the tariff rates.

Demurrer to first count overruled, and to second sustained.

235.—Cary, et al. v. Eureka Springs Ry., et al. 7 I. C. C. Rep. 286. (April 21, 1897.)

Complaint of unreasonable rates to Eureka Springs, Ark., and of preference and discrimination against Eureka Springs by less rates to Eureka Springs on traffic destined to points beyond by wagon transportation, than on traffic there terminating.

Defendants' line of railroad terminated at Eureka Springs. They established a stage and wagon line to Harrison and other points

beyond Eureka Springs, and put in force rail rates to Eureka Springs, which when the ultimate destination of the traffic was at points on the wagon route beyond, were 25% to 60% below the straight rates to Eureka Springs. The Eureka Springs Ry. was in rather poor financial condition and not showing much return on the capital invested.

Held, (Morrison, C.), (a) that the Act did not apply to transportation by wagon, and the railroads plus the wagon line were not in this case a "joint route";

(b) that the transportation by wagon beyond Eureka Springs did not render the conditions of traffic destined beyond that point by wagon dissimilar to the conditions under which it was transported when its destination was Eureka Springs;

(c) that to charge a less rate on such traffic was an unjust discrimination against Eureka Springs shippers;

(d) that although transportation charges should be liberal until earnings were sufficient to show a fair return on actual investment, it did not follow that rates were reasonable simply because the earnings of the road did not show such returns;

(e) that in view of the financial condition of defendant's road, rates to Eureka Springs would not be declared unreasonable to the full extent of the discrimination, but they should be reduced to figures named, (p. 313);

(f) that under the recent Federal decisions, although it was the Commission's duty to notify the roads of the unreasonableness of the rates in question, it had no power to prevent unreasonable rates for the future.

Order accordingly.

236.—New York, N. H. & H. R. Co. v. Platt & Perry, Receivers of N. Y. & N. E. R. Co. 7 I. C. C. Rep. 323. (June 26, 1897.)

Complaint that defendants charged less rate to the junction of their line with complainant's road, on freight going on over complainant's line, than their regular local rate to such junction points.

Complainant had a line running from Newburgh, N. Y., to Jersey City, and from there to Willimantic, Waterbury and other points in Connecticut. Defendant's road ran from Newburgh to Waterbury and to three other points connecting with complainant's line. Complainant had refused to make joint through rates with defendant from Newburgh to points on complainant's line in Connecticut beyond the junction points, as it wished to haul the freight by its own line via Jersey City. Defendant published a "joint tariff" to such points, taking as its share less than its full local rate from Newburgh to the junction point, but allowing complainant its full local rate beyond, the total rate being low enough to meet competition by the other route. Complainant's share of this rate varied with the distance the freight was to go over defendant's line beyond the junction; for example, where the local to the junction was \$1.20, com-

plainant's share as to shipments to Union City was 85c., and to Beacon Falls 67c. The tariff did not specify the shares received by complainant and defendant, and did not state that defendant joined in the through rate except by calling the rate a "joint rate."

Held, (Knapp, C.), (a) that joint tariffs could be formed only by agreement and consent of the roads, and that the tariff in question was not a "joint tariff" within the meaning of Sec. 6;

(b) that the tariff published did not show the rate for the local haul by complainant from Newburgh to the junction as it should;

(c) that independent of the form of publication, in the absence of an agreement for joint through rates, it was illegal for a road to charge rates over its own line varying according to the ultimate destination of the freight beyond its line;

(d) that there were but two kinds of rates, local rates, and joint rates, and that in the absence of an agreement for a joint rate neither road could charge less than its regular local rate.

Order accordingly.

Clements, C., concurred in the decision as to publication, but dissented as to the legality of a less rate depending on the distance of ultimate destination beyond defendant's line, holding that there was a third species of rate, a combination through rate, which, in accordance with the rule that the rate per ton-mile should decrease with the distance, might properly be less than the local rate.

237.—*Fewell v. Richmond & Danville Ry., et al.* 7 I. C. C. Rep. 354. (Aug. 20, 1897.)

Complaint of unreasonable coal rates from Corona, Ala., to points en route to Jackson and Vicksburg, Miss., of greater charge for shorter distance, and preference of Jackson and Vicksburg, and demand for reparation.

At Jackson and Vicksburg there was railroad competition, and also market competition from other mines in Alabama and Mississippi and from Pennsylvania coal coming down the river by boat, but this competition did not lower the rates to points near Jackson and Vicksburg on the way from Corona.

Held, (Knapp, C.), (a) that from the facts it appeared that the competition of railroads at Jackson and Vicksburg was not a controlling factor, or else the rates to near surrounding points would have been affected;

(b) that competition of different markets did not justify a railroad in making an exception to Sec. 4 on its own responsibility;

(c) that competition by water, in order to justify such an exception, must be such that if the freight in question did not travel by the rail route it would go by water, and since the water routes here did not touch Corona this factor was no justification;

(d) that the demand for reparation should be denied as not sufficiently proved.

Order accordingly.

238.—Gustin v. Illinois Central R. Co., et al. 7 I. C. C. Rep. 376. (Oct. 19, 1897.)

Complaint of preference of Omaha over Kearney, Neb., by refusal to join in through rates to Kearney.

Kearney was 196 miles west of Omaha. Rates to Kearney from the south were made by adding to the Omaha rate the local rate from Omaha to Kearney. No joint rate to Kearney was filed and there was no system of billing freight from which a joint arrangement might properly be inferred.

Held, (Prouty, C.), (a) that the Commission had no power to order a carrier to join in through rates or routes;

(b) that as none was here agreed on by the railroads and as the rates to Omaha and those from Omaha to Kearney were both reasonable, no violation of the Act appeared.

Complaint dismissed.

239.—Kentucky Board of R. R. Com'rs. v. Cincinnati, N. O. & T. P. R. Co., et al. 7 I. C. C. Rep. 380. (Oct. 19, 1897.)

Complaint of unreasonable rates on wheat from Nicholasville, Ky., to certain southern points and violation of Sec. 4 in lower charge from Cincinnati, Ohio, to the same points.

The unreasonableness of the rates was attempted to be shown by a comparison with rates in other parts of the country, and on longer hauls. While the case was pending, the rates were so altered as to remove the objection under Sec. 4.

Held, (Prouty, C.), (a) that as the objection under Sec. 4 had been removed no order would be issued with reference thereto;

(b) that the rates were not shown to be unreasonable;

(c) (semble) that shrinking of rates below those in published tariff to meet lower combinations via other routes was unlawful.

240.—Omaha Commercial Club v. Chicago & N. W. R. Co., et al. 7 I. C. C. Rep. 386. (Nov. 18, 1897.)

Complaint of preference of Council Bluffs over Omaha in rates to Iowa points.

Rates from Council Bluffs and Omaha to practically all points (except a few in Nebraska within thirty miles of Omaha) were the same, except rates to points in Iowa, as to which the differential against Omaha was the amount of the bridge toll over the Missouri River. Rates from Omaha into Iowa, however, with the bridge toll included, were 20% lower than from Council Bluffs to the same distance into Nebraska. Rates from the south and east to Omaha and Council Bluffs were made equal by reason of competition with the Missouri Pacific, which crossed the river at a lower point. Ninety per cent. of the tonnage to Council Bluffs was from the east, and really paid the bridge toll, as the Council Bluffs rate had been raised to equal the Omaha rate. Sixty-five per cent. of Omaha imports came from the east, but one-third of the out-bound Council Bluffs

tonnage went west, and one-third of the in-bound Council Bluffs tonnage came from the west. Only twenty per cent. of Omaha's out-bound tonnage went to Iowa points. From the west there was a blanket rate from Omaha to Chicago. It thus appeared that Omaha had the practical advantage under the system of rates in force. There was evidence of a contract between the bridge owners and the railroads that rates to all points from Council Bluffs and Omaha should be the same.

Held, (Knapp, Yeomans and Prouty, C. C.), (a) that the bridge was an important factor in the haul and a charge for the toll over it was proper;

(b) that relaxation of this charge on hauls to and from certain points was either the result of competition or did not operate to the disadvantage of Omaha;

(c) that the contract in question was not satisfactorily proved;

(d) that if it had been proved it could make no difference, since the Commission had no authority to enforce contracts, and since contracts were no justification to railroads for violations of the Act;

(e) that to justify the intervention of the Commission it must appear that the preference and advantage in the one case, and the corresponding prejudice and disadvantage in the other, are so appreciable and established with such a degree of certainty as to be justly declared unreasonable.

Morrison, Ch., and Clements, C., dissented relying mainly on the contract.

Complaint dismissed without prejudice.

241.—Montell v. Baltimore & Ohio and Southern Ry. 7 I. C. C. 412. (Dec. 31, 1897.)

Complaint of unreasonable coal rates to North Garden, Va., from Cumberland, Md., of preference of Lynchburg in rates from North Garden, and of violation of Sec. 4.

The rate to North Garden was originally about 30% greater than for the greater distance to Lynchburg, being \$3.30 and \$2.50 respectively, but after filing answers, defendants raised the Lynchburg rate to \$3.30 and then reduced both rates to \$3.24. No claim was made for reparation.

Held, (Morrison, C.), (a) that as the complaint under Sec. 4 had been satisfied, and as there was no evidence as to unreasonableness but the bare figures, which were not sufficient, no order would be issued;

(b) (semble), that if the rate were unreasonable, under the recent Federal decisions, the Commission was powerless to remedy it, since it could not order a railroad to establish or maintain any rate but that which it saw fit to fix itself.

Complaint dismissed without prejudice.

242-A.—Calloway v. Louisville & N. R. Co., et al. 7 I. C. C. Rep. 431. (Dec. 31, 1897.)

Complaint of unreasonable freight rates from New Orleans to La Grange, Ga., preference of Atlanta, a more distant point, and violation of Sec. 4.

Complainant was a merchant at La Grange, Ga. The rates from New Orleans to La Grange were the rate to Atlanta, plus the local back 71 miles to La Grange. There was strong competition at Atlanta, both railroad and commercial. There were two railroads entering La Grange from New Orleans, but competition between them was smothered by an understanding between them. Defendants admitted the Atlanta rate to be reasonable, it yielding a higher ton mile return than the average of the region, while defendants' expenses were very low. For many years they had paid 12% on their stock. Defendants presented evidence that the La Grange freight was hauled as through freight only as far as Montgomery, Ala., and that from there to La Grange it went as local freight.

Held, (Clements, C.), (a) that this was through freight in spite of the manner of hauling it;

(b) that although, under recent Federal decisions, competition such as existed at Atlanta justified an exception to Sec. 4, this was only true where such competition as would naturally exist at the nearer point was given full sway;

(c) that as the Atlanta rates were reasonable, those to La Grange for a shorter haul were unreasonable, and constituted an illegal preference of Atlanta over La Grange.

Complaint sustained and order accordingly.

242-B.—Interstate Commerce Commission v. Louisville & N. R. Co., et al. 102 Fed. 709. C. C. S. D. Ala. (See also 101 Fed. 146.) (Dec. 2, 1899.)

Bill to enforce order issued in above.

Held, (Toulmin, D. J.), (a) that a greater charge from New Orleans to La Grange than for the greater distance on the same line to Hogansville and other points named was in violation of Sec. 4, and also of Secs. 1 and 3.

(b) that as regards the conclusion by the Commission that such rates were unreasonable in themselves, this was a most difficult problem, but as the Commission's findings were not clearly shown to be erroneous, the Court would not interfere with them.

Decree granted.

Reversed, 108 Fed. 988, in view of decisions of the Supreme Court in *I. C. C. v. Clyde S. S. Co.*, and *E. Tenn. V. & G. R. Co. v. I. C. C.* (154-B) and (162-D), and sent back to Commission for further investigation and opinion on the reasonableness *per se* of the rates to La Grange.

242-C.—Interstate Commerce Commission v. Louisville & N. R. Co. 190 U. S. 273; 42 L. Ed. 1047; 23 S. Ct. Rep. 687. (May 18, 1903.)

Appeal from C. C. A. 5th Circuit.

The rates to La Grange were based on those to Atlanta, a more distant point from New Orleans, and as the same system was followed with reference to points between La Grange and Atlanta, these points took lower rates than those to La Grange. If the La Grange rates were based on Montgomery, the nearest competitive point south of La Grange, they would be much greater than those complained of. The order of the Commission, although declaring the La Grange rates to be unreasonable *per se*, nevertheless permitted the defendants to rectify the violations of Secs. 3 and 4 by raising the rates to points between La Grange and Atlanta to the level of the La Grange rates. At the time the complaint was filed combinations on Opelika to La Grange on certain commodities were lower than those in force, but this was remedied by tariffs in force a year before the decree of the Court below.

Held, (White, J.), (a) that defendants might properly give points between Atlanta and La Grange the benefit of the competition at Atlanta and that a violation of Secs. 3 and 4 did not result from the rates in question;

(b) that the finding of the Commission as to the unreasonableness of the rates *per se* was shown to be founded on an error of law by the order above noted;

(c) that the fact that defendants might, if they chose, bring about competition at La Grange equivalent to that at Atlanta by means of a line from Macon, did not render the actual competition at Atlanta ineffective as a justification in this case, since the Act contemplated actual competition and not merely the possibility of such competition arising;

(d) that as the rates above specified, based on Opelika, had been remedied prior to the entry of the decree of the Circuit Court of Appeals, and as no request had ever been made to that Court to modify its decree so as to require the continuance of the altered rates, such decree would not now be modified in that respect;

(e) (semble) that if it appeared that, by agreement between the carriers to a shorter distance point, competition there was voluntarily suppressed, this might be of weight in passing on the question of discrimination or of the reasonableness *per se* of the rates under consideration.

Decree of C. C. of A. affirmed.

Harlan, J., dissents.

243.—Savannah Bureau of F. & T., et al. v. Charleston & S. R. Co., et al. 7 I. C. C. Rep. 458. (Dec. 31, 1897.)

Complaint of preference of Charleston, S. C., and other points, over Savannah, Ga., in the relative rates to Georgia, Florida, etc., by the disregard of distance in fixing such rates.

To places in Georgia rates were fixed from Savannah by the Georgia Commission, Savannah getting a differential in such cases of fifty cents over Charleston. To points in Florida and Alabama the rates

from both points were the same. To some points between Charleston and Savannah the rates were higher than for the whole distance. The same was true of points near Jacksonville. There was water or railroad competition between the cities mentioned. The rates to distant points were fixed by circuitous lines.

Held, (Prouty, C.), (a) that although distance might well be regarded in fixing rates, it need not necessarily be where other considerations compelled its disregard;

(b) that the Commission was here powerless, to adjust this situation, as the wrongs were caused by improperly adjusted rates over independent lines from competing cities to a common destination, and the Commission had no authority to fix either minimum or maximum rates;

(c) that under the Federal decisions competition, either by water or by roads subject to the Act, justified a less charge for a longer distance.

244.—Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co., et al. 7 I. C. C. Rep. 481. (Jan. 19, 1898.)

Complaint of preference in rates from the south and west on wheat and flour against Milwaukee in favor of Minneapolis, and of a higher charge on wheat than on flour.

Of late years the milling business had grown largely at Minneapolis and fallen off at Milwaukee. The Chicago, Milwaukee & St. Paul Railroad Co. was the only road serving both cities, though several different roads ran to each. On some roads the rate on wheat to Milwaukee was in some cases higher than on flour, which prejudiced the Milwaukee millers. The differentials which existed in favor of Minneapolis were in many cases inconsistent and operated to the disadvantage of Milwaukee.

Held, (Knapp, C.), (a) that in considering distance as a factor in rate making, short line distances were the proper units;

(b) that, although a number of roads did not serve both cities and thus might cut under any differential which the Commission might order the C. M. & St. P. to adopt, it was nevertheless the duty of the Commission to condemn the present system of rates and to indicate what it considered a proper adjustment;

(c) that such an adjustment might be made by adopting a system of tariffs based on a short line distance;

(d) that a higher rate on wheat than on flour worked an unjust discrimination against complainants, and should be discontinued.

Order entered accordingly.

245-A.—Cattle Raisers' Ass'n. of Texas v. Fort Worth & D. O. R. Co., et al. 7 I. C. C. Rep. 513, 555-A. (Jan. 20, 1898.)

Complaint of unreasonable charge for delivering live cattle in carloads to Chicago stock-yards.

The members of complainant Association bought cattle in the

south and west and shipped to Chicago. Prior to June, 1894, such cattle were delivered by defendants to the Union Stock Yards free of extra charge. The United States Stock Yards were then finished and exclusively used. The United States Stock Yards Co. charged the defendants 80c. to \$1.50 per car for its services. This Company transported dead freight in and out of the yards itself, but not live stock, though its charter permitted this. In case of live stock the shifting, etc., was done wholly by the railroads. After the imposition of the 80c.-\$1.50 charge on the defendants by the United States Stock Yard Co., defendants increased the rate per car on cattle from all points by \$2.00, this all going to the terminal road. Apart from this \$2.00, these rates were reasonable and long standing. They had lately been reduced \$10-\$15 per car. At St. Louis, Kansas City and other points the railroads absorbed the stock yard charge. In a recent Circuit Court case, where one of the defendants had held cattle to enforce payment of this \$2.00 charge, the Court had held it to be legal, (see 184-B.) The Chicago Live Stock Exchange, an incorporated association, perhaps illegal under the Sherman Act, intervened as complainant.

Held, (Prouty, C.), (a) that the Chicago Live Stock Ass'n. was a proper complainant and its violation of a different statute did not prevent its enforcement of this one;

(b) that, as to live stock, the United States Stock Yards Co. was not a common carrier subject to the jurisdiction of the Commission, and should be dismissed as a defendant;

(c) that although ordinarily the Commission was concerned only with the total charge, nevertheless where, as here, the railroads themselves separated a part of it and added as a terminal charge a sum which alone was attacked, and which on division of the rate among the roads, all went to the terminal road, in such a case the Commission could deal with that particular charge and road separately;

(d) that the fact that the railroads absorbed this charge at St. Louis, etc., did not make it illegal here, as the competition at such points was greater;

(e) that the Circuit Court had passed only on the general legality of the charge, and not on its reasonableness;

(f) that a \$2.00 charge by the railroads, dependent solely on a charge of but 80c.-\$1.50 by the Stock Yards Co., was unreasonable, and that \$1.00 was a reasonable charge;

(g) (on re-hearing, p. 555-a) that the unreasonableness of the rate under Sec. 1 made its imposition a preference under Sec. 3;

(h) that the case should be held open to allow complainants to prove damages.

Order accordingly.

245-B.—Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al. 94 Fed. 272. C. C. N. D. Ill. N. D. (May 9, 1899.)

Demurrer to petition to enforce order of Commission issued in above, requiring defendants to desist from an unreasonable terminal charge of \$2 per car on live stock to the stock yards at Chicago, and requiring defendants not to charge more than \$1 per carload.

The Commission had found that \$2 was a reasonable charge for the service rendered and expense paid to the Stock Yards Company by the railroads at Chicago for hauling the stock from the regular depot at Chicago as far as the stock yards, and there unloading them. It also found that, prior to the imposition of the terminal charge, the carload rate on cattle theretofore imposed was reasonable, and further found that the additional expense, relying on which the railroads had imposed the \$2 charge, was but \$1. It appeared that on Oct. 1, 1906, rates on live stock from points embraced in the territory covered by this complaint had been reduced by from \$10 to \$15 per car, and the Commission held that the rate, as thus reduced, was reasonable without the addition of the charge of \$2.

Held, (Kohlsatt, D. J.), (a) that the order requiring defendants to desist from the charge in question was one which the Act empowered the Commission to apply to the Court to enforce;

(b) that the case of *Walker v. Keenan* (184-B), did not determine the reasonableness of the charge in question, but merely its legality;

(c) that on demurrer to the petition, the Court would adopt a broad construction of the findings of the Commission as supporting its order.

Demurrer overruled, (see also 399-A-F, 453 and 629.)

245-C.—Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al. 98 Fed. 173. C. C. N. D. Ill. N. D. (Dec. 4, 1899.)

Petition by Interstate Commerce Commission to enforce its order in the above case.

Held, (Kohlsaat, D. J.), that insomuch as defendants might legally segregate terminal charges and transportation charges, and insomuch as the petition admitted that the terminal charge in itself was reasonable, its exaction was in no wise illegal.

Petition dismissed.

245-D.—Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al. 103 Fed. 249; 43 C. C. A. Rep. 209; C. C. A. 7th Circuit. (June 15th, 1900.)

Appeal from C. C. N. D. Ill. N. D.

Held, (Brown, C. J.), (a) that defendants were entitled to make an additional terminal charge equivalent to the extra expense occasioned by the haul of the cattle from their tracks to the stock yards, and the unloading of them there;

(b) that defendants, on the imposition of the trackage charge by the Stock Yards Company, might properly adopt a new schedule with relation to such terminal facilities, and charge the actual cost thereof,

even though such might be somewhat in excess of the amount which was the immediate occasion for the additional charge, where the terminal charge considered as a whole was reasonable for the service performed.

Judgment affirmed.

Grosceup, J., dissented on the ground that the spirit and purpose of the Act required a single charge be made and posted.

245-E.—Interstate Commerce Commission v. Chicago, B. & Q. R. Co., et al. 186 U. S. 320; 46 L. Ed. 1182; 22 S. Ct. Rep. 824. Appeal from C. C. A. 7th Circuit. (June 2, 1902.)

Held, (White, J.), (a) that as the right of the defendant to divide its rate and make distinct charges for transportation to the end of its line, and for delivery over the lines of the Stock Yards Company had been conceded by the Commission and the Courts below, this question would not be passed on, although such segregation of charges would seem to be proper;

(b) that, under the findings of the Commission, the rate charged prior to the imposition of the \$2 charge had included not merely the service to the end of the defendant's tracks, but also delivery to the Union Stock Yards over their lines;

(c) that the imposition of a \$2 charge by reason of being subjected to an additional charge on the part of the Stock Yards Company of but \$1, was unreasonable, and that without reference to the general reduction of the rate per car the finding and order of the Commission was correct and enforceable;

(d) that inasmuch as the Commission had expressly held that in passing on the reasonableness of the terminal charge the total rate should be considered, and since by the \$15 reduction this total rate had been reduced to what the Commission found was a reasonable figure, the cause of complaint had been removed and the order appealed from was non-enforceable, the question being as to the reasonableness of the rate, and not as to whether in making the reduction the carriers had in mind the terminal charge.

Decree of C. C. A. affirmed without prejudice to the right of the Commission to proceed hereafter to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the \$15 reduction did not apply.

245-F.—Cattle Raisers' Ass'n. of Texas v. Chicago, B. & Q. R. Co., et al. 10 I. C. C. Rep. 83. (March 4, 1904.)

Proceedings to ascertain and award damages on account of unreasonable charge for delivery of live stock in carloads to Chicago stock yards.

The Supreme Court refused to enforce the order of the Commission that the railroad's charge for live stock from the south and west to Chicago was \$1 per car too much by reason of the imposition of the \$2 terminal charge at issue in the foregoing case, because of

a reduction of the rate in 1896 much greater than \$2. In the decision the Court authorized the Commission to take further proceedings to correct the unreasonable charge from points to which the reduction referred to did not apply, and to award damages from the time of the imposition of the \$2 charge, June 1, 1894, to the time of the reduction in 1896.

Held, (Prouty, C.), (a) that by reserving to the Commission the right to commence new proceedings, the Supreme Court did not mean that the whole case must be begun over again, but that the Commission might take such additional testimony as it thought necessary on the two points above mentioned.

(c) that the Cattle Raisers' Ass'n. was a proper complainant, and that any member of it might now present an itemized claim of damages which the railroads might answer;

(d) that the Statute of Limitations had not run, since all proceedings dated back to the beginning of the original action;

(e) that although all the roads, parties to the through rates in question, were proper parties, they were not necessary, since the present defendants, the roads entering Chicago, retained the entire \$2.00 charge complained of to their own use.

Case reopened.

245-G.—Cattle Raisers' Ass'n. of Texas v. Chicago, B. & Q. R. Co., et al. 11 I. C. C. Rep. 277. (Aug. 16, 1905.)

Proceedings to ascertain and award damages on account of unreasonable charge for delivery of live stock in car-loads to Chicago stock yards.

The reduction of 5c. per hundred pounds of October, 1896, applied only to about one-thirtieth of the shipments. In making the reductions, wherever made, no consideration was given by the railroads to the fact that the \$2 charge had been added. Since 1899 there had been three advances in live stock rates into Chicago. Prior to 1894 the rate into Chicago had included delivery at stock yards operated by an independent company, and not on the lines of the defendant railroads. The facts stated in the two previous cases were also considered. This proceeding was to determine as to what territory the reduction of 1896 applied, and as to what other territory cattle rates had since become so low that the \$2 per car terminal charge was reasonable.

Held, (Prouty, C.), (a) that delivery at the stock yards prior to 1894 was not gratuitous, but included in the rate;

(b) that the fact that the stock yards were not the railroads' freight depot and that they were not on its line, was immaterial;

(c) that the railroads be ordered to desist from the \$2 charge as to all territory not covered by the reduction.

The question of reparation was reserved.

245-H.—Cattle Raisers' Association of Texas v. Chicago, B. & Q. R. Co. 12 I. C. C. Rep. 6. (Nov. 14, 1906.)

Petition to re-open the order of the Commission of November 16, 1905, and to proceed under the Act of June 16th, 1906.

The order entered by the Commission had never been obeyed. The complainant Association filed a petition to set aside such order and re-open the case for further proceedings with a view to a decision and order under the new Act. The case had been pending since Sept., 1896, and concerned the \$2 per car terminal charge on live cattle into Chicago. No proceedings had been begun in Court to enforce the order.

Held, (Prouty, C.), that the Commission would treat the case as closed by the former order, unless it were shown that injustice would be done, as did not then appear.

245-I.—Cattle Raisers' Ass'n., et al. v. Chicago, B. & Q. R. Co., et al
12 I. C. C. Rep. 507. (Oct. 21, 1907.)

Complaint of unreasonable terminal charge of \$2 per car on live stock in carloads at Chicago.

The Commission, in an opinion by Prouty, C., reviewed the previous litigation with reference to this question and held that defendants should desist from a greater charge than \$1 per car, except in the territory to which reductions of Oct. 1, 1906, applied, holding that any excess of this amount was unreasonable, and that it was a preference of Kansas City, St. Louis, Omaha and other live stock markets where such charge was not exacted. It was also held that the decree by a Court dismissing a bill brought to enforce an order made by the Commission prior to June 29, 1906, was not a bar to the right of the Commission to re-examine the question at a subsequent time. See also 399-A-F, 453 and 629.

246.—Pond-Decker Lumber Co. v. Spencer. 86 Fed. 846. C. C. A.
5th Circuit. (April 12, 1898.)

Appeal from C. C. N. D. Ga. (81 Fed. 277), awarding to complainant, in action to recover the difference between the rate contracted for on a through shipment and the sum of the local rates filed, a sum less than that difference.

The Pond-Decker Co. had contracted with Fletcher, the general freight agent of the carriers connecting with the initial road, for a through rate of 36c. per 100 pounds from Tallapoosa, Ga., to Decker-ville, Ark. This rate was given by reason of the mistake of Fletcher as to the amount of the various local rates by the most direct route, this in fact being 66c. No through rate was filed between the above points. The initial road wilfully misrouted the freight by another line and the terminal road refused to deliver up the freight except on payment of the regular charges.

Held, (McCormick, C. J.), (a) that the defendant, whose authorized agent had contracted for the 36c. rate, could not escape liability for damages for failure to adhere thereto on the ground suggested;

(b) that where no through rate was filed, shippers were not bound to notice that the sum of the locals filed was the legal through rate.

Judgment reversed and decree entered for \$949.76, the full difference between the agreed rate and that collected.

247.—American Warehouseman's Ass'n. v. Illinois C. R. R. Co., et al. 7 I. C. C. Rep. 556. (Feb. 3, 1898.)

Complaint of discrimination in favor of certain shippers by allowing them free storage and other special privileges not appearing on the tariffs.

Complainant was a voluntary association of warehousemen and forwarding agents. Complaint was made on behalf of producers, dealers and consignees of various kinds of freight over all the principal roads, asking for a general order requiring all carriers to publish, as part of their tariffs, what free storage was granted, and the terms and conditions under which it would be granted. It appeared that practically all of the roads had rules that demurrage would be charged after 24 or 48 hours, and that a carload would be delivered to one consignee only. These rules were often departed from, on account, as the roads claimed, of competition, and free storage was often granted, although there was never publication of the fact.

Held, (Yeomans, C.), (a) that complainants had a standing to make such a public complaint;

(b) that free storage for some shippers and not for all was discrimination;

(c) that if free storage was required by competition, publication of facilities, etc., was essential;

(d) that the general order prayed for should be granted.

248.—Re Atchison, T. & S. F. R. Co.'s Application. 7 I. C. C. Rep. 593. (Feb. 24, 1898.)

Application for relief under Sec. 4 by reason of the competition of a foreign road.

Complainants, being American carriers in competition with Canadian Pacific, asked relief from Sec. 4, as to all points where there was competition with the Canadian Pacific. It appeared that the latter, until February, 1898, had a \$79.00 passenger rate from Boston to the Pacific Coast. It then put a \$40 rate into effect, without the assent of the American roads running to its junction point, and, where necessary, it absorbed the rates within the United States at both ends of the haul.

Held, (Prouty, C.), (a) that if the Canadian Pacific were subject to the Act, in charging less from its own terminals because the passenger came from the United States, it would violate the Act, since there was no joint arrangement between the Canadian Pacific and the American roads;

(b) that since the Canadian Pacific was not subject to the Act, a relieving order would be entered as prayed for.

250.—Savannah Bureau of F. & T., et al. v. Charleston & S. R. Co., et al. 7 I. C. C. Rep. 601. (March 24, 1898.)

Complaint of unreasonable interstate rates between Savannah, Ga., and Charleston, S. C., and intermediate points, as higher than would be legal as intrastate rates under the laws of Georgia and South Carolina.

Up to March 9, 1896, defendant could charge 4c. per mile in South Carolina, and had a rate of \$4.60 for the 115 miles from Savannah to Charleston. South Carolina then made the legal rate $3\frac{1}{4}$ cents, and defendant went to the South Carolina Commission for relief. The maximum Georgia rate was 3c. Defendant's railroad extended 17 miles in Georgia. Defendant reduced the rate to \$4.40, making it 3.826 cents per mile for the whole distance. This total rate was 3c. less than the legal rate prior to March 9, 1896, and 71c. greater than allowed subsequently by the combined legal rate of the two States. The road ran through a swamp, which made transportation very expensive.

Held, (Knapp, Ch.), (a) that though in general a through rate should never exceed the sum of two reasonable local rates, and though the Commission would presume that rates fixed by the States were reasonable, yet here there was substantial dissimilarity between through and local service, and the through rate complained of was reasonable;

(b) that it did not appear that the residents of Savannah could not compete favorably with Charleston under the existing rates or that they were unduly prejudiced by the rates complained of.

Complaint dismissed.

251.—Gulf, C. & S. F. R. Co., et al. v. Miami S. S. Co. 86 Fed. 407; 30 C. C. A. Rep. 142; 52 U. S. App. Rep. 732; C. C. A. 5th Circuit. (March 29, 1898.)

Appeal from order of C. C. E. D. Tex., enjoining defendants from discriminating against complainant, the Miami Company, in facilities for through routing, in favor of the Mallory Line, as to traffic from Texas to New York.

Defendants had made an agreement making an exclusive through route with the Mallory Line. As to traffic via the Miami ships to and from Galveston, they required prepayment of their local railroad rates in every case, and would not permit through billing at a lower proportional rate.

Held, (McCormick, C. J.), that neither the common law nor the Act required a road to contract for through routes with connecting lines, and that it might so arrange with one line without being required to give equal facilities to others.

Order accordingly.

252.—New York Produce Exchange v. Baltimore & Ohio R. Co., et al. 7 I. C. C. Rep. 612. (April 30, 1898.)

Complaint of unreasonable differential on export grain to the Atlantic Seaboard, against New York, in favor of Philadelphia and Baltimore.

This differential was 2c. per 100 pounds in favor of Philadelphia, and 3c. in favor of Baltimore. It had been established by arbitration in 1882, after numerous rate wars, and had been intended to give the southern roads a fair share of the traffic by equalizing the lower ocean rates from New York. It appeared that as to all articles and to all points rates were based on Chicago. Since 1882 values had shrunk greatly, corn being only about one-half as valuable, and rates had also been reduced, so that the differential was much more strongly felt than at the time of its establishment. The short line distance from Chicago to Baltimore was 802 miles, to Philadelphia 822 miles, and to New York 912 miles, but the differential applied also to shipments from points in Mississippi, Ohio, Lake Ports, etc. On cargo shipments of grain, ocean rates from New York, Philadelphia and Baltimore were about the same, but on berth shipments those from New York were about 2c. lower. New York shippers paid about 1c. more per one hundred pounds for lighterage. Since 1882, New York exports had fallen off and those at Philadelphia and Baltimore had increased. New York had better storage facilities and also the advantage of the Erie Canal, but certain disadvantages as well. The ex-lake differentials of 1c. in favor of New York against both Philadelphia and Baltimore were also attacked.

Held, (Prouty, C.), (a) that it was not the province of the Commission to regulate the business policy or operations of carriers, but only to see that the Act was not violated by them;

(b) that under the Act railroads were entitled to prefer one locality over another, provided only such preference be not undue, but a preference without a legitimate excuse was of itself an undue and unreasonable one;

(c) that the burden was here on complainants to establish that there was an undue preference;

(d) that competition might, but did not necessarily, justify a preference;

(e) that the present differential had been established not by cost of service or distance, but by the competition of the southern roads for export traffic;

(f) that *prima facie* a preference which was reasonable in 1882 would by reason of the lessened values and rates, be unreasonable in 1898, but in a matter as far-reaching as the present, the best way to judge of the reasonableness of the differential was in its effect on the traffic;

(g) that although of late years exports at Philadelphia and Baltimore had increased and those at New York had fallen off, such a condition was natural, in view of the spread of commerce all over the country to the minor ports, and could not be attributed solely to the differential;

(h) that, for the present, the Commission would not attempt to disturb the rate relation, since the evidence was not sufficiently convincing to warrant a change in so vital a matter, and since it was better to err on the side of the smaller cities; but if it subsequently should appear that by reason of the differential, New York exports continued to fall off, action might be taken by the Commission to change the differential.

Complaint dismissed.

253.—South Carolina Board of R. R. Com'rs. v. Florence R. R. Co., et al. 8 I. C. C. Rep. 1. (May 19, 1898.)

Complaint of unreasonable rates on South Carolina melons to New York.

The rates in question were the same as those at issue in *Loud v. S. C.*, 5 I. C. C. Rep. 529, (161), in which the Commission held that it could not pass on the reasonableness of these rates by reason of lack of evidence as to the cost of production of melons. Evidence was here offered as to such cost of production and shipment, but this was inconclusive. The rate per ton mile on this traffic was from .76c. to 1.1c., which was lower than the average of defendants' rate on all freight (except cotton.) The service required special and exceptional facilities, sidings, the hauling back of empty cars, etc.

Held, (Yeomans, C.), that although as a general rule railroad rates should bear a fair relation to the cost of production and the market value of the commodities, the evidence did not satisfy the Commission that the rates in question were unreasonable.

Complaint dismissed without prejudice.

254.—U. S. ex. rel. Coffman v. Norfolk & W. R. Co., et al. 109 Fed. 831. C. C. D. W. Va. (June 15, 1901.)

Application for mandamus to require defendant to allot to relator his proper share of coal cars.

Relator's mine was on the west slope of the Great Flat Top. From this region the transportation to points east was very difficult, and to make the rate the same to shippers on the east and west slopes, it was agreed that the shippers on the east slope should be given, in addition to their regular share of cars, the 1500 cars in use before the west slope was opened. Complaint was made that defendant refused to assure relator that he might have the exclusive use, in addition to his regular share, of any private coal cars he might furnish to the railroad, and also that fuel cars furnished to various mines were not counted as part of the share of such mines. Car distribution in this region was on the coke-oven basis, this having been in force for many years.

Held, (Jackson, D. J.), (a) that individual cars, whether rented by the railroad or in course of purchase on the instalment plan, must be pro-rated like any other cars;

- (b) that fuel cars might be excluded in making division of cars;
 - (c) that if, in time of car-famine a railroad pro-rated its available cars on an equitable system, it was doing its whole duty under the Act;
 - (d) that the system here in force was reasonable.
- Writ denied

255.—Brockway v. Ulster & D. Railroad Co., et al. 8 I. C. C. Rep. 21. (June 23, 1898.)

Petition to secure modification of an order for the Commission.

Complainants sought to secure a modification of the order in *Milk Producers' Ass'n. v. Delaware, L. & W. R. Co., et al.* 7 I. C. C. Rep. 92, (220), whereby the defendant was allowed to charge rates there fixed for points in "group 4," on milk and cream shipped from stations on defendant's line, which, according to distance, would ordinarily take the lower rates ordered in that case for the third group distance, over other lines. This concession was made because of defendant's heavy grades over the mountains, etc. It appeared that the New York dealers were basing the market price on the rate charged over the second, or 26c. group, whereby the complainants received 6c. less per can than the former price, the fourth group rate being 32c. Complainant had been represented in the *Milk Producers' case*.

Held, (Knapp, Ch.), (a) that ordinarily a party to the original record would be debarred from trying to obtain a new decision by a new proceeding, but the petition in this proceeding might be regarded as a petition to modify the old order, and as such would be allowed;

(b) that the 6c. differential was proper, being on account of poor geographical position;

(c) (semble) that railroads might charge 29c. from stations in group 4 if they so desired, but were not bound to charge less than 32c. Petition dismissed.

256.—Dallas Freight Bureau v. Texas & Pac. R. R., et al. 8 I. C. C. Rep. 33. (June 23, 1898.)

Complaint of unreasonable cotton rates from Dallas, Texas, to New Orleans, and a less rate from New Orleans to Dallas than to Kansas City, a more distant point.

To alter the rate from Dallas to New Orleans would have necessitated a change of rates all over Texas, over which the Texas Commission had full control. There was a strong rail and water competition at Kansas City and none at Dallas, and the rate from New Orleans to Dallas did not appear to be altogether unreasonable.

Held, (Prouty, C.), (a) that the competition at Kansas City justifies an exception to Sec. 4;

(b) that in view of the great changes necessary and of the adequate

supervision of the rates in question by the Texas Commission, the Interstate Commerce Commission would not interfere.

Complaint dismissed.

257.—Listman Mill Co. v. Chicago, M. & St. P. R. Co. 8 I. C. C. Rep. 47. (Aug. 18, 1898.)

Complaint of rates on grain from the west and on flour to the east, to and from La Crosse, Wis., and demand for reparation.

Complainant's mill was at La Crosse. In shipments of grain from the west and of flour to Chicago, Milwaukee and the east, La Crosse millers enjoyed a milling-in-transit privilege at $2\frac{1}{2}\%$ above the through rate via La Crosse from the grain fields to destination. Minneapolis millers did not have this privilege, but the in and out rates on grain and flour at Minneapolis were so adjusted that their sum was always $2\frac{1}{2}\%$ above the through rate via Minneapolis. This system was more advantageous than that of milling-in-transit, since under the latter, all the grain came in by rail, but a good deal of flour was consumed locally or sent down the river and the grain of which such flour was made paid the full local rate. Complainant did not ask, however, that the Minneapolis system be put in force at La Crosse, but merely that the $2\frac{1}{2}\%$ arbitrary be taken off. From points on the Southern Minnesota Division, La Crosse, being on the through line east (while Minneapolis was north of it) got milling-in-transit rates 3c. below the rates via Minneapolis. The local rates to Minneapolis and La Crosse from such points were the same as were the rates from Minneapolis and La Crosse to Chicago (the latter being $12\frac{1}{2}\%$.) When, by reason of rate wars, rates from Minneapolis east were reduced, those from La Crosse were reduced correspondingly. Milwaukee and Chicago enjoyed certain advantages by reason of their situation on the lake. Complainant alleged that the $12\frac{1}{2}\%$ local to Chicago was unreasonable and demanded reparation to the extent of the $2\frac{1}{2}\%$ arbitrary on milling-in-transit shipments made. Complaint was also made that at Minneapolis tariff rates had not been observed.

Held, (Knapp, Ch.), (a) that the respective geographical positions of Chicago, Milwaukee and La Crosse entitled each to the benefits thereof, but under the rates in force each appeared to be getting such advantages;

(b) that although it might be more equitable to have the Minneapolis system in force at La Crosse, such was not asked by complainant, and complainant was not entitled to have milling-in-transit at the through rate without the $2\frac{1}{2}\%$ arbitrary;

(c) that the question as to the right of La Crosse to have the Minneapolis system should be left open;

(d) that if tariff rates had been departed from at Minneapolis it was a question for the criminal courts and not for the Commission.

Complaint dismissed without prejudice.

258.—Re Canadian Pacific Passenger Rate Differentials. 8 I. C. C. Rep. 71. (Aug. 31, 1898.)

Complaint by American railroads of the action of the Canadian Pacific in cutting transcontinental passenger rates, and in demanding a differential.

The American roads here asked the aid of the Commission in their struggle with the Canadian Pacific for passenger business, and requested permission to make exceptions to Sec. 4. In an opinion reviewing the situation the Commission said that it had little power in the premises, called attention to the fact that economically, by reason of its longer haul and slower time, the Canadian Pacific had no right to participate in the business.

Held, (Prouty, C.), (a) that the circumstances justified the American roads in making an exception to Sec. 4;

(b) (semble)) that neither the fact that its route was more circuitous nor that its running time was greater entitled the Canadian Pacific to a differential in its favor.

259.—Phillips, Bailey & Co., et al. v. Louisville & N. R. Co., et al. 8 I. C. C. Rep. 93. (Jan. 10, 1899.)

Complaint of unreasonable rate on sugar and molasses from New Orleans to Nashville, of discrimination and preference of Louisville, and of violation of Sec. 4.

By the Louisville & Nashville, Louisville was 185 miles more distant than Nashville on the same line, but by short line distance, the distance to each was approximately the same. Water competition existed at both points, but was more effective at Louisville. Rates to Nashville were higher than to Louisville.

Held, (Clements, C.), (a) that Sec. 2 applied only as between two shippers for the same service;

(b) that a carrier violating Sec. 4 might and usually did at the same time violate Secs. 1 and 3;

(c) that the burden was on the roads to justify a departure from the rule of Sec. 4, and merely to raise a doubt was not sufficient;

(d) that the difference in conditions justified the same, but not a higher rate to Nashville than to Louisville;

(e) (semble), that to charge the same rate to a more distant as to a less distant point on the same line, was a discrimination, but not necessarily an unjust one.

Order accordingly.

260.—Kemble v. Boston & Albany R. Co., et al. 8 I. C. C. Rep. 110. (March 7, 1899.)

Complaint of differential in rates from the west to Boston in favor of grain for domestic consumption.

The rate from Chicago to East Boston was the same as to New York on export grain, but on domestic grain to Boston there was a 2c. differential over the New York rate, the latter being the same

on both export and domestic grain. Defendant claimed that the question was *res adjudicata*. East Boston was a few miles beyond Boston.

Held, (Prouty, C.), reviewing and explaining previous decisions on the subject, (a) that as a matter of law it was not illegal, under the first three sections of the Act, to charge a lower inland rate on export grain than that charged on grain for domestic consumption;

(b) that it was not unlawful under Sec. 4 to charge a lower rate for the greater distance to East Boston on export grain than for the less distance to Boston on domestic grain, since the former was really part of a through haul to foreign ports;

(c) that the same general principles of law governed both export and import rates;

(d) that the Commission had jurisdiction over the regulation of the inland portion of export and import rates;

(e) that competition kept the export rate down to that from New York, and so a somewhat higher domestic rate was proper;

(f) that the reasonableness of the Boston domestic rate or of its relation to the New York rate, was not passed upon;

(g) that a publication and maintenance of its division of the through export rate was all that was required in this case, but that no opinion was expressed as to the question where there was a fixed through rate with fluctuating inland divisions.

Complaint dismissed.

261.—Re Cotton Rates by the K. C., M. & B. R. Co., et al. 8 I. C. C. Rep. 121. (March 27, 1899.)

Investigation, on informal complaint, of defendants' refusal to establish rates on both compressed and uncompressed cotton, of violation of Sec. 4, in less rates to Memphis, Tenn., than to intermediate points on the same line, and of the practice of "floating cotton."

It did not appear that anyone was injured by the failure to have two rates on cotton. At Memphis, there was competition by water (although this would seem to have been potential and not actual competition.) By the practice of "floating cotton" in force on the defendant roads, the cotton was sent from the point of origin to the nearest compress, where it was pressed and graded, (the make-up of the bales being changed in the latter process.) It was then shipped to destination, the total rate paid being the straight through rate from the point of origin to destination. The destination of the cotton was sometimes allowed to be changed en route and only the rate to the new destination accepted. Formerly all cotton in the region around Memphis had been sent there for grading and pressing, there being a low rate out of Memphis, but the floating system, which originated about 1891, had largely reduced the Memphis business and thrown it to smaller points.

Held, (Prouty, C.), (a) that in the absence of injury to anyone appearing, the Commission would not order a rate on compressed cotton;

(b) that in view of the competition by water at Memphis, of the apparent reasonableness of rates to intermediate points, and of the absence of power in the Commission to order an increase of rates at Memphis, the complaint under Sec. 4 was not sustained;

(c) that cotton shipped under the floating system was through traffic; *Re Grain Rates of A. T. & S. F. R. Co., et al.* 7 I. C. C. Rep. 240, (248), (1897), distinguished.

(d) that this system benefited the railroads in not requiring such a long haul for compression, and the shipper in saving commissions at Memphis, etc., assisted small points against larger ones (the latter being a weighty consideration in the eyes of the Commission) and was in no way illegal;

(e) (semble), that where, as here, the privilege of compression was allowed at the tariff rate, this fact should appear in the printed tariff.

262.—*Dawson City Board of Trade v. Central of Ga. R. Co., et al.*
8 I. C. C. Rep. 142. (March 27, 1899.)

Complaint of preference of Americus, Albany and Eufaula, Ga., over Dawson, Ga., by application of the basing point system, and of violation of Sec. 4.

Dawson lay between Americus, Albany and Eufaula, all of which were regarded in the railroad system as basing points or trade centres. In making any shipment, one or the other of these points was nearer and another farther away than Dawson, but both were always given better rates than Dawson, the Dawson rate being the lowest combination of the through rate to one of these points with the local from there to Dawson. There were two or more railroads to each place including Dawson, and there was no more competition at these basing points than at Dawson. The basing system as applied was purely an arbitrary one.

Held, (Prouty, C.), (a) that Dawson was entitled to as low a rate as any more distant point;

(b) that the basing point system, if adopted, should be equally administered, Dawson being entitled to be a basing point as well as Americus, Albany or Eufaula.

Order accordingly.

263.—*Grain Shippers Ass'n. of Iowa v. Ill. Central R. Co., et al.*
8 I. C. C. Rep. 158. (1899.)

Complaint of grain rates from points near Sioux City to the Atlantic Seaboard, and of preference of Kansas City over such points.

Since the decision by the Commission in the Food Products Case, 4 I. C. C. Rep. 48, (106), the rate from Kansas City had been greatly reduced, below even what the Commission there held was reason-

able, but that from Sioux City and Iowa points had not been reduced to a corresponding degree, so that at the time of the complaint the Kansas City rate was considerably lower, being 12c., while that from Sioux City was 19c. Complainant offered evidence of rates on other commodities, such as coffee, cattle, stoves, etc., showing that rates on much more valuable articles were but little higher than those on corn. The Iowa rates had been maintained by mutual understanding of the various roads. The Illinois Central produced a statement showing that a reduction of 4c. per 100 pounds on grain would bankrupt it. There was also evidence as to the cost of raising grain. The controlling influence in forming the rates in question was competition between railroads. The difference between rates on corn and wheat varied, but averaged 4c. It was not claimed that rates in general were too high, but only those on grain.

Held, (Prouty, C.), (a) that to reduce a rate on a staple commodity over a large territory, was a most serious question, and would not be undertaken by the Commission except on a satisfactory showing;

(b) that where conditions had adjusted themselves by long experience the Commission would not disturb them merely because it did not consider them ideal, but that it must see something better to replace them with;

(c) that the value of an article transported was an important element in determining its rate of transportation, but not the only element, and that in a case like the present, it was not sufficient without evidence of the other considerations;

(d) that if a grain producer could not afford to ship grain at a reasonable rate the railroad was not bound to take it at an unreasonably low one;

(e) that where a railroad could transport traffic at a rate which although very low, enabled it to prevent such traffic from going to a competitor, it was justified in charging such a low rate;

(f) that in justifying a discrimination it was not sufficient for defendant to show competition, but that in addition something as to the nature and extent of the competition must be shown;

(g) that the fact that a railroad was not earning dividends was no justification of seemingly unreasonable rates, but the history and management of the railroad must be shown in order that it might be determined whether or not bad management was not the cause of the deficit;

(h) that the rate on corn from Sioux City was apparently unreasonably high in comparison with that from Kansas City;

(i) that reparation could not be awarded by the Commission unless it were shown that the rate in question was unreasonable at the time it was charged, and that this was not shown in the present case, the rate having become unreasonable under changed conditions.

Order accordingly.

264.—Re Export Rate from Points East and West of Mississippi River. 8 I. C. C. Rep. 185. (April 12, 1899.)

Proceedings instituted on complaint of preference in rates to the Atlantic Seaboard, of points west of the Mississippi River over those east.

Up to 1898 export rates on grain were all based on the Chicago rate, which was then 17½c. per 100 pounds. The Peoria rate was then 110% of the Chicago rate, and the Mississippi River rate on corn originating west of the river, was the same as that from Chicago (although before 1898 it had been 116% of the Chicago rate.) In 1898 the railroads reduced the Chicago rate to 16c., and the Peoria rate to 17½c., and the rate from the Mississippi River on corn originating west, to 13½c., this being a reduction of 1½c. at Chicago, and of 4c. from the Mississippi River. As a result, no Illinois corn could be exported, and there was a flood of export corn from the river. From a number of points east of the river, the best possible combination—that on Chicago—was higher than the rate from a number of points west of the river, including the local rates from such points to the river. Defendants claimed that the preference to Iowa shippers in the export trade was made up by an advantage to Illinois shippers in domestic rates, as to which there was still a differential in favor of Illinois, but the evidence showed that there was no movement of Illinois corn to any extent even in the United States. Competition was shown not to be the controlling factor in fixing these rates.

Held, (Calhoun, C.), (a) that it was illegal for railroads to create artificial differences in rates;

(b) that the facts of this case presented an illegal preference of Iowa shippers over those east, which no commercial necessity justified.

(c) that when rates within one State were applied as part of combination rates in interstate traffic, they should be published and filed with the Commission;

(d) that the evidence was not sufficient to enable the Commission to determine the proper relation of the rates in question, but the complainants might apply for a further hearing thereon;

(e) that the reasonableness of Iowa corn rates, the legality of the "transit system" in general, and the propriety of the proportional rates from the Mississippi River, all of which questions arose incidentally, were not passed upon.

Order that defendants cease and desist from charging higher through or combination rates on export corn from Illinois points than from points in Iowa.

265.—Re Export and Domestic Rates on Grain and Products Thereof. 8 I. C. C. Rep. 214. (Aug. 7, 1899.)

Investigation by the Commission as to the reasonableness and proper relation of above rates.

(A) Relative domestic and export rates.

It appeared that in May, 1899, domestic rates on grain and grain products had been 17c. per 100 pounds, and export rates 12c., from Chicago to New York, but since that date export rates had been reduced still lower by reason of a rate war. The price of American surplus wheat did not control the price of wheat abroad, but contributed largely to do so. The present low export rates were the result of railroad competition for the export traffic, and of competition of steamship companies at different ports. The producer and the foreign consumer divided the advantage of the low export rate, according to which market controlled the price abroad, but the reduction in this rate was an absolute loss to the railroads. The present domestic rate was not unreasonable. In the past the export rate had been nearer the domestic one, but not always adhered to. There was some difference in the cost of service in export and domestic traffic, but what this was did not clearly appear.

Held, (Prouty, C.), (a) that the Act did not require an inland rate on export traffic to be the same as the domestic rate;

(b) that as to preferences and discriminations the Commission had power over the inland portion of an export or import rate;

(c) that the Commission would not concur in any permanent condition by which foreigners received an advantage in rates over American citizens, but that the recent condition was probably temporary only;

(d) that a low export rate was often necessary to dispose of the surplus product, and that some difference was proper on this account;

(e) that the greater volume of export traffic probably did not justify a lower inland rate on such traffic;

(f) that in view of the varying ocean rates, making necessary differentials in favor of Philadelphia, Baltimore, New Orleans, etc., over New York and Boston, and in view of ocean competition, the difference in rates was not unreasonable, and the Commission would take no action in the premises, provided the rates from points east of Chicago be maintained at reasonable figures;

(g) that export rates from any point to the seaboard should in no case be less than from any intermediate points on the same line.

(B) Relative export rates on grain and grain products.

Except for a short time in 1891, the same rate had been published on wheat and on flour up to February, 1899. Then the export rate on wheat was made 12c., while the domestic wheat rate and the domestic and export flour rate were continued at 17c. This difference gave a great advantage to English millers, and of late years the American milling industry had fallen off by reason of the change in the rates.

Wheat paid 1¼c. per 100 pounds for loading in addition to the rate, while flour did not. Wheat was taken in larger lots and was less liable to injury than flour.

Held, (Prouty, C.), (a) that the rate on raw materials should *prima facie* be lower than that on products;

(b) that the long continuance of the same rate on wheat and flour put the burden of proof on the railroads to justify a change;

(c) that in the present case a less rate on wheat was proper, but that the difference should not be more than 2c. per 100 pounds.

(C) Publication of export rates.

Some railroads published inland rates only; some published joint through rates with ocean carriers, varying the divisions of such through rates without notice, and some railroads did not publish any export rates at all. Grain for the most part went at a stable inland rate and flour at a stable through rate.

Held, (Prouty, C.), that it was proper to publish either a constant inland rate or a constant through rate, but in either case the rate must be filed and adhered to;

(b) that if there was no joint through rate and no agreement as to such between the railroad and the steamship company, then it was proper to publish the inland rate only;

(c) that if there was an agreement for a joint through shipment, at a given rate, then the whole rate should be published, and the proportions going to the steamship company and the railroad might vary if the whole rate remained constant.

Order issued in accordance with foregoing opinion.

266.—*Gustin v. Atchison, T. & S. F. R. Co., et al.* 8 I. C. C. Rep.

277. (Aug. 7, 1899.)

Complaint of unreasonable rates from Chicago to Kearney, Neb., and preference of Omaha.

Rates to Kearney, 196 miles west of Omaha, were made by adding to the Omaha rate the local from Omaha to Kearney. Defendants filed through rates and engaged in through traffic to Kearney. The Omaha to Kearney local rates were reasonable. Complainants referred to rates in other sections of the country as showing the unreasonableness of those in question.

Held, (Yeomans, C.), (a) that where carriers filed through tariffs and participated in through hauls, they were bound to see that such through rates were reasonable;

(b) that a rate could not be declared unreasonable merely by comparison with a lower rate per ton-mile in another locality, or as part of a through haul, though such a comparison was often valuable;

(c) that combination rates were generally unreasonable;

(d) that although there was apparently a discrimination here in

favor of Omaha, the evidence of the circumstances, etc., was not clear or decisive enough to warrant action by the Commission.

Complaint dismissed without prejudice.

267.—Re St. Louis & S. F. R. Co's. Violations of the Act. 8 I. C. C. Rep. 290. (Nov. 1, 1899.)

Complaint of unreasonable rate on live poultry from Marshfield, Mo., to Chicago, as compared with that from Springfield, Mo., a more distant point on the same line, of preference of Springfield, and of violation of Sec. 4.

Marshfield, Mo., was 213 miles southwest of St. Louis, and 25 miles northeast of Springfield, Mo., defendant's line from St. Louis to Chicago running first through Springfield and then through Marshfield. The rate from Marshfield on poultry to Chicago was 49½c., and from Springfield via Marshfield to Chicago 37c. per 100 pounds. The local rate from Marshfield to Springfield was 12c., and so it was cheaper to ship from Marshfield back to Springfield and from there to Chicago, than to ship direct from Marshfield to Chicago. At Springfield there was competition via Kansas City, but on this route Sec. 4 was adhered to, and it was also observed by defendant west of Springfield, and on shipments between Springfield and St. Louis. The requirement of the Act was departed from only between Springfield and St. Louis on shipments to Chicago. The Springfield rate appeared to be fairly remunerative, and had not been forced down by competition.

Held, (Knapp, Ch.), (a) that the burden was on defendant to justify, both the violation of Sec. 4, and the preference under Sec. 3, and this burden had not been met in the present case;

(b) that defendant could not justify such violation by alleging that there was a through rate to Springfield, and none to Marshfield;

(c) that in view of the observance of Sec. 4 by competitors, the existing rate from Marshfield was unreasonable, and constituted an undue preference of Springfield and a violation of Sec. 4.

Order accordingly.

268.—Kansas Board of R. R. Com'rs. v. Atchison, T. & S. F. R. Co., et al. 8 I. C. C. Rep. 304; (Nov. 1, 1899.)

Complaint of rates on wheat, flour, corn and cornmeal to Texas points, and of unreasonable differentials in favor of wheat and corn, in violation of Sec. 4.

No evidence was offered as to the reasonableness of the rates, except the statement of rates from points less distant from Texas. The differential against flour was 5c. per 100 pounds, and against cornmeal 7c., the rate on wheat being 2c. higher than on corn. The value of cornmeal was only about one-third that of flour. In case of export grain and flour, defendants in some cases made greater charges for lesser distances. Since the decision of the Commission sustaining the 5c. differential against flour, in Kauffman Milling Co.

v. Mo. Pac. R. Co., 4 I. C. C. Rep. 417, (1891), (121), rates had decreased 25%. Under the 5c. differential, flour was still shipped to Texas, but the 7c. against cornmeal was prohibitive, and no meal moved under it.

Held, (Prouty, C.), (a) that although distance was an important factor in rate-making, so vital a question as the present could not be decided on distance alone, without other evidence;

(b) that although former decisions of the Commission were not binding on it as are those of a Court, such decisions would be adhered to unless conditions were clearly shown to have changed, and the 5c. differential against flour was still a reasonable one;

(c) that the differential against cornmeal was unreasonable and should not exceed 3c.;

(d) that as to export grain, Sec. 4 should be observed, there being no substantial dissimilarity in circumstances and conditions. Order accordingly.

269.—*Chicago Fire Proof Covering Co. v. Chicago & N. W. Ry. Co., et al.* 8 I. C. C. Rep. 316. (Nov. 1, 1899.)

Complaint of unreasonable arbitrary against Summerdale, a station on the southwestern outskirts of Chicago, in shipments east.

Summerdale was a regular station at the Chicago & Northwestern within the Chicago city limits, 7 miles from the terminus, on the line to Milwaukee. According to the tariffs on file, a certain arbitrary was added to the Chicago rate east, on shipments from points between Chicago and Milwaukee, but the roads did not allow such rates from points in the city limits, adding a charge which, on asbestos pipe covering, amounted to 22c. per 100 pounds, and which on shipments made by complainant had amounted in the aggregate to 81c. Shipments from Milwaukee and shipments in less-than-carloads from Summerdale went through the regular Chicago central junction, but carload shipments from Summerdale went, for the most part, by another route around Chicago.

Held, (By the Commission) (a) that, as to less-than-carload shipments, Summerdale was clearly a lesser distance point than Milwaukee and intermediate points, and as no dissimilar conditions were shown, it should have as low rates as such points;

(b) that the tariffs in force provided for the same rate from Milwaukee and Summerdale, and should be observed;

(c) that on both the foregoing grounds complainant was entitled to recover the overcharge proved;

(d) that such system of charge would not be a discrimination against other Chicago shippers, whose location forced them to haul their products to the central station, since Summerdale was a regular station and the varying cost to shippers of getting their freight to the nearest station was not a proper consideration in fixing rates;

(e) that as to carload shipments no finding would be made;

(f) (semble) that as to carload shipments the same rule should apply.

Order accordingly.

270.—Allen & Lewis v. Oregon R. & Nav. Co., et al. 98 Fed. 16; 106 Fed. 265. C. C. D. Oreg. (Nov. 20, 1899); (Jan. 16, 1901.)

Demurrer to bill and amended bill to enjoin the enforcement of a schedule of joint rates by defendants from Portland, Ore., to southeastern points, alleged to be unreasonable and unduly prejudicial to Portland, as compared to the rates from San Francisco to the same points via the Southern Pac. R. Co. and the Short Line.

The joint through rates from Portland to the points in question via the line of the two defendants were the same as those established from San Francisco by the Short Line R. Co., and the Southern Pac. R. Co., although the latter distance was considerably greater. The traffic from Portland was carried west by the Short Line R. Co., while that from San Francisco was hauled in the opposite direction. This road received a less amount as its share of the freight on San Francisco business, but not less in proportion to the lengths of the hauls in the two cases. The rates from Portland were not really complained of, except as compared with those from San Francisco, complainant wishing to have all on a mileage basis. It was also complained that defendant's rates to Ogden were lower than to less distant points.

Held, (Bellinger, D. J.), (a) that the Court had no power to regulate the division of through rates between connecting carriers;

(b) that in making the rates in question the same, defendants did not create an undue preference of San Francisco;

(c) that if such had been true the Southern Pacific Railroad was a necessary party;

(d) that complainant could not object to the Ogden rates being below those to nearer points.

Demurrer sustained.

271.—Castle v. Baltimore & O. R. Co. 8 I. C. C. Rep. 333. (Nov. 29, 1899.)

Complaint of discrimination in favor of certain persons in rates, and in car supply for sand to Chicago from nearby points.

Held, (Yeomans, C.), that complainant's evidence did not support his allegations or make out a case entitling him to relief.

Complaint dismissed.

272.—Tileston Mill Co. v. Northern Pacific Ry. Co. 8 I. C. C. Rep. 346. (Nov. 29, 1899.)

Complaint of unreasonable rates at St. Cloud, Minn., east on flour and west on coal to and from the Atlantic Seaboard, as compared with those from and to St. Paul, of preference of St. Paul thereby, and of violation of Sec. 4.

St. Cloud was a town on the Northern Pacific line, between St. Paul and Duluth, 76 miles north of St. Paul and 241 miles south of Duluth. Three other much shorter lines ran between St. Paul and Duluth, and carried 98% of the traffic. The Northern Pacific, for a long time, had no through rates between St. Paul and Duluth in connection with the water lines to the east. Subsequently, in order to utilize their empties, they put in force the same rates from St. Paul as the other railroads, but left the rates from St. Cloud as formerly. These were 7c. per 100 pounds higher on flour than from St. Paul on the through New York rates of $21\frac{1}{2}$ c., making a $28\frac{1}{2}$ c. rate from St. Cloud to New York. Rates on coal from the east were higher over defendant's line to St. Cloud than to St. Paul, by 60% to 100%. The rates on east-bound flour and on west-bound coal were complained of. It appeared that the profit on flour was often not more than from 1c. to 3c. per barrel, and that the three competing lines of railroads all observed Sec. 4, making no higher rate from an intermediate point than from a more distant point. The Great Northern Railroad had in construction, a somewhat shorter line from St. Paul to Duluth.

Held, (Prouty C.), (a) that water competition was not a factor to be considered, since, while such competition was important in determining the through rate between New York and St. Paul, of which the rate in question was a part, the lines from Duluth to St. Paul were links in the lake and rail route, and could not set up water competition in excuse of the rate which they themselves made in furtherance of that competition;

(b) that the reasonableness of the rates *per se* was not the question at issue;

(c) that the question whether competition between the railways in and of itself created dissimilar circumstances and conditions, was one of fact, and, in each particular instance, the surrounding facts must be considered in order to determine whether the circumstances and conditions were so dissimilar as to justify the greater charge for the shorter distance;

(d) that there was unjust and undue discrimination in this case;

(e) that the length of the defendant's line was not a controlling factor;

(f) that the fact that St. Paul rates were very low, and that there was no more prejudice to St. Cloud after the rates between St. Paul and Duluth were put in force than before, and that St. Cloud would be no better off, should the through rate be removed, afforded no satisfactory answer to the complaint;

(g) that the Commission did not seek to evade the Supreme Court decisions, but only to preserve Sec. 4 of the Act;

(h) that as no evidence had been introduced to show damages, no reparation would be awarded.

Order accordingly.

273.—Spillers v. Louisville & Nashville R. Co. 8 I. C. C. Rep. 364. (Nov. 29, 1899.)

Complaint of violation of Sec. 6 in meeting lower combination rates by other lines without publication or notice.

The defendant had instructed its agents that wherever the rate from Cincinnati and Louisville to Gallatin, Tenn., was greater than the combination rate to Nashville and back, they were to disregard the tariff and charge the lesser rate.

Held, (Yeomans, C.), that this was a violation of Sec. 6, and any practice modifying the regular tariff rates must be set out in the published tariff.

Order accordingly.

274.—Philadelphia Trades League v. Philadelphia, W. & B. R. Co., et al. 8 I. C. C. Rep. 368. (Dec. 8, 1899.)

Complaint of unreasonable rates on iron pipe fittings in cases.

The railroads running south, rated iron pipe fittings and other iron articles, on a special commodity rate, 39c. per 100 pounds, when shipped in casks, barrels or kegs, but as second class, at \$1.08, when shipped in cases or boxes. Shipping by barrels was the method most convenient to the shipper, and also the cheapest method. Cases or boxes were no easier to handle and no more of them could be loaded on a car. On complaint filed, the railroad company alleged that it was less likely that articles of superior value would be smuggled in barrels than in cases or boxes.

Held, (Knapp, Ch.), that as the shipper had a free choice and might get which rate he chose by adopting either method of shipment, the railroad company had here exercised a proper discretion in a proper manner.

Complaint dismissed.

275-A.—Savannah Bureau of Freight, et al. v. Louisville & Nashville R. Co., et al. 8 I. C. C. Rep. 377. (Jan. 8, 1900.)

Complaint of (1) unreasonable rates from New York to points on the Pensacola and Atlantic Division of the Louisville & Nashville, as compared with those from New York to Mobile, New Orleans and Savannah; (2) of unreasonable rates from Savannah to such points as compared to those to such points from New Orleans and Mobile; (3) of unreasonable rates on cotton, rosin and turpentine from such points to Savannah, as compared with rates from the same points to Pensacola and to Mobile and New Orleans.

The Louisville and Nashville ran west from Pensacola, and east as far as River Junction, between which lay the towns as to which complaint was made. It was, therefore, to the interest of this railroad to drive its traffic westward. The Company had built up Pensacola, and stimulated trade along the Pensacola and Atlantic Division, (Pensacola to River Junction.) It charged as its share to River Junction, on through hauls to Savannah from all points on the Divi-

sion, 15c. on rosin and 25c. on turpentine, whether the haul was 6 or 155 miles, the through rates to Savannah being $24\frac{1}{2}$ c. and $38\frac{1}{2}$ c., and the roads east of River Junction getting $9\frac{1}{2}$ c. and $13\frac{1}{2}$ c. for hauling 259 miles. In the opposite direction the rates ranged from 5c. and 7c. at a point 6 miles east of Pensacola, to $9\frac{1}{2}$ c. and 21c. at a point 155 miles east. There was no local rate on either rosin or turpentine from such points to River Junction. The volume of traffic on the Division was small, and Savannah was a very large market. From half way points on the Division, the Louisville and Nashville got 15c. as its proportion east, and $7\frac{1}{2}$ c. west. The price of rosin was $3\frac{1}{2}$ c., and of turpentine 6c. higher at Savannah than at Pensacola. At the time when complaint was filed, the rates on cotton to Mobile and New Orleans were \$2 and \$2.50 per bale, and to Savannah, \$2.75. But, after the hearing, this latter rate was raised to \$3.30, without any advance in the Mobile and New Orleans rates. New Orleans was about as far from Pensacola as Savannah was from River Junction.

Held, (Clements, C.), (a) that as to the first two charges the rates were not shown to be unreasonable;

(b) that as to the third complaint, the former cotton rates were not unreasonable, but the subsequent increase was unreasonable, and the difference between the rate from Savannah and that from New Orleans should not exceed 25c.;

(c) that, as to the rosin and turpentine rates, a railroad had a right to refuse to join in rates where it did not get a reasonable proportion of the rate and could send shipments further on its line, but it could not lawfully establish rates which would prevent shippers from using a good market, and compel them to give all the trade to a market chosen by the railroad;

(d) that it was not a sufficient answer, that the Louisville and Nashville Railroad could secure more reshipments from Pensacola than from Savannah, which was off its line;

(e) that the shares in the Louisville and Nashville Company in the through rates to Savannah, were unreasonable and unjust, in comparison with the rates to Pensacola, and operated to make the entire through rates unlawful, under Secs. 1 and 3 of the Act;

(f) that the defendant's share of the rates on rosin and turpentine from Division stations on the Pensacola and Atlantic Division to River Junction on freight destined for Savannah, should be reduced so as not to exceed the local rate in the other direction to Pensacola for like distance, (see table, p. 395); except as to certain points near River Junction, where the Railroad Company should be allowed, on shipments of turpentine to Savannah, more than its local rate for the like distance to Pensacola, such rate to be determined by adding a differential of 6c. to the Louisville and Nashville rate from the point at a corresponding distance from Pensacola.

Order accordingly.

275-B.—Interstate Commerce Commission v. Louisville & N. R. Co., et al. 118 Fed. 613. C. C. S. D. Ga. E. D. (July 2, 1902.)

Bill to enforce order of Commission in above requiring adjustment of east-bound rates from points on defendant's River Division to Savannah via River Junction, so as to conform equitably to those west-bound to Pensacola and points west thereof, and to cease the preference of Pensacola over Savannah produced by the present rates.

The Louisville & Nashville R. Co. ran west from Pensacola but not east from River Junction so that it was to defendant's interest to promote west-bound traffic to Pensacola, Mobile, etc., in preference to east-bound via River Junction to Savannah via connecting lines. To this end through rates were established to Savannah, which by reason of the L. & N. R. Cos.' share as far as River Junction were prohibitory, especially as regards naval stores (rosin and turpentine), to shipments to Savannah and gave practically a monopoly in such articles from this region to the sole dealer in them at Pensacola.

Held, (Speer, D. J.), (a) that in view of the findings of the Commission that the rates in question were unreasonable and preferential, the burden was on the respondents to disprove these findings;

(b) that although a railroad might to a certain extent consult its individual interest in fixing the relative rates to different localities it could not for that purpose adopt rates which as to one point were so excessive as to be prohibitory, or which were unduly preferential of another locality;

(c) that although east and west bound rates need not always be the same where the conditions of the two hauls were different, such was not the case here;

(d) that discriminations and preferences might be justified to safeguard the interests of the public, but might not be justified where injurious to the public interest;

(e) that it was here for the public interest to have the traffic go through the better market at Savannah and not to give a monopoly to the sole dealer at Pensacola;

(f) that the fact that the River Division considered as a separate railroad, did not pay expenses, did not justify the rates in question;

(g) that although the difficulty obviously lay in the share of the through rate received by the L. & N. R. Co., nevertheless all the roads to Savannah, parties to the joint through rates thereto, were responsible for it, and order should issue against all of them.

276.—Interstate Stock Yards Company v. Indianapolis Union Railroad Company, et al. 99 Fed. 472. C. C. Ind. (Jan. 27, 1900.)

Motion for injunction requiring defendants to desist from discrimi-

nation in refusing to deliver and receive at complainant's stock yards live stock consigned for and by it, to and from other places, while allowing such privilege to competing stock yards companies.

The Indianapolis Union Railroad Company was chartered and incorporated to lease the Belt Road Company, which operated a line of tracks around Indianapolis, wholly within the State of Indiana, but was authorized and required by State laws and city ordinances to give connections to interstate railroads running into Indiana. These connections had, in fact, been made, and the road was engaged in delivering and shipping through traffic to and from other States in connection with such road. Complainants had a switch connection with the Belt Road, but defendants contended that this was simply for the purpose of delivering and receiving dead freight, and not for live stock. The railroads desired to have all the stock yard business handled at the yards of the Belt Road Stock Yards Company.

Held, (Baker, D. J.), (a) that the Indianapolis Union Railroad Company was either engaged in the interstate commerce under a common arrangement so as to be subject to the Act, or was operated by the other defendants so as to be a necessary party to this litigation;

(b) that the Act required carriers subject thereto to give equal privileges with regard to switch connections to all competing shippers;

(c) that it was immaterial whether the discrimination relied upon depended on the duty of the carrier created by statute or of the duty growing out of contract, and it was, therefore, immaterial that the state statute required the Belt Railroad to allow switch connections.

Injunction awarded.

277-A.—Danville v. Southern Railway, et al. 8 I. C. C. Rep. 409. (Feb. 17, 1900.)

Complaint of preference of Lynchburg, Va., over Danville, Va., in rates from the north, west and south.

Danville was 66 miles southwest of Lynchburg by the short line, and the same distance beyond Lynchburg from the west, although nearer by the distance over defendant's line, defendant being the only road running into Danville. From New Orleans, Danville was 66 miles nearer by short line, and from New York it was equally distant by short line, and 66 miles nearer by defendant. Lynchburg was on the main line of the C. & O. and N. & W., and from the west took Baltimore rates. The basing point or trade centre system was used in determining rates to Lynchburg and Danville, the Danville rate being in all cases the sum of the rate to Lynchburg plus the local from Lynchburg to Danville. Though Danville was formerly prosperous, its business was now declining. The defendant alleged that it had no power to alter the Lynchburg rates by reason of competition of other roads, that the Danville rates were reasonable *per se*, and

that it would do no good to Danville for the defendant to raise the Lynchburg rate and thus give up its Lynchburg business.

Held, (Prouty, C.), (a) that under the decisions of the Supreme Court the questions under Sec. 4 were in every case questions of fact, taking the interest of all parties into consideration, including competition between railroads;

(b) that in the present case competition would justify somewhat higher rates to Danville than to Lynchburg, but not such a disparity as to annihilate Danville;

(c) that the system of rates in force violated both Sec. 4 and Sec. 3;

(d) that if, by reason of an order of the Commission, the defendant would be forced to give up its Lynchburg business, it would doubtless use its great influence to bring about a proper adjustment of rates fair to Danville;

(e) that the rate to Danville should not exceed that to Lynchburg by more than 10% from New Orleans and from the north, and by more than 15% from the west, and that any greater disparity was an undue preference.

The railroads were given ten weeks in which to comply with the above opinion.

..... **277-B.—Danville v. Southern Railway**, 8 I. C. C. Rep. 571. (Nov. 17, 1900.)

Petition by defendant for a modification of the order proposed in preceding case.

Within four days of the ten weeks which defendant was allowed to adjust the rates in question, it appeared and asked for a modification of the proposed order, on the ground that to follow such an order would bankrupt it. A calculation was produced, based on the theory that to reduce the Danville rates would necessitate a reduction in rates to all surrounding points to the level of the Danville rates, such rates then being higher than those to Danville. The figures produced were evidently very cleverly arranged.

Held, (Prouty, C.), (a) that the statistics were not convincing and did not show the advisability of modifying the proposed order;

(b) that even though it appeared that the order would seriously affect defendant by reason of its poor financial condition, this would not be a ground for its modification, insomuch as a railroad might not justify an undue discrimination or preference by alleging its precarious financial condition.

277-C.—Interstate Commerce Commission v. Southern R. Co. 117 Fed. 741. C. C. W. D. Va. (Aug. 4, 1902.)

Bill to enforce order issued in above requiring a discontinuance of the preference of Lynchburg and Richmond, Va., over Danville, Va., and of violation of Sec. 4.

At Danville there had formerly been four competing roads but

these had recently all come under the control of the defendant, without, however, the Danville rates being raised. At Lynchburg and Richmond there was strong competition with other roads, these points being on the main line. The basing point system was applied, Danville taking through rates which were the sum of the rates to Lynchburg or Richmond plus the local rates from those points to Danville.

Held, (McDowell, D. J.), (a) that in view of the competition at Lynchburg and Richmond the rates at those points were not unreasonably low nor was there an undue preference of them or a violation of Sec. 4, unless the Danville rates were unreasonable *per se*;

(b) that in passing on the reasonableness of rates the most important considerations were "the opinions of expert witnesses, the effect of the present rates on the growth and prosperity of Danville, the cost of transportation as compared with the rates charged, and the rates in force at numerous other cities where the circumstances are as nearly similar as may be to those prevailing at Danville."

(c) that in view of these considerations the rates in question were not unreasonable.

Petition dismissed.

Affirmed 122 Fed. 800 (1903), in an opinion by Boyd, D. J., for C. C. A. 4th Cir., adding nothing to foregoing.

278.—*Lehigh Valley R. Co. v. Rainey, et al.* 99 Fed. 596. C. C. E. D. Pa. (Feb. 19, 1900.)

Demurrer to plea to jurisdiction in action for freight due for transportation between Clearfield, Pa., and Perth Amboy, N. J., in a case removed by defendant from a State Court.

At the time of removal no defense had been interposed. Defendant now contended that the defense proposed was under the Act and that the State Court could not take cognizance of it.

Held, (Dallas, C. J.), that since the suit was one over which the State Court had jurisdiction, the Federal Court had jurisdiction on removal, although it alone had power to administer the statute on which the defense was based.

Demurrer sustained.

279.—*Sprigg, et al. v. Baltimore & Ohio R. Co., et al.* 8 I. C. C. Rep. 443. (March 2, 1900.)

Complaint of discontinuance of 180 trip tickets between Baltimore and Washington, while continuing them between other points.

Complainant was a commuter, living at Baltimore and in business at Washington. Defendants had sold a 180 trip quarterly ticket, at a rate amounting to over four mills a mile. Their next best rate was on a 60 trip monthly ticket, at six mills a mile. About 200 of these tickets a quarter were sold. The 180 trip quarterly ticket was subsequently discontinued between Baltimore and Washington but it was still sold on other lines of the Baltimore & Ohio, and on the line be-

tween Washington and Baltimore, each way, to points a little short of the middle. It appeared likely that this discontinuance was due to an agreement between several defendant railroads.

Held, (Knapp, Ch.), (a) that the Act permitted lower commutation rates provided they were offered to all without discrimination;

(b) that the Commission could not force the railroad companies to put particular commutation rates in force, and it was immaterial that these rates had been in force and had been discontinued;

(c) that there was no question in this case of discrimination, or of party rates, or of a preference;

(d) that the Commission could not enforce special rates for particular classes of travellers;

(e) that the Commission could not enforce the Anti-Trust Act, or give any consideration to the fact that it had been violated;

(f) (seem) that if defendants discontinued all commutation, unreasonable rates would probably be produced.

Complaint dismissed.

Clements, C., dissented on the ground that there was here an undue preference in favor of the places which still had the one hundred and eighty trip ticket.

280.—Gustin v. Burlington & Mo. R. Co., et al. 8 I. C. C. Rep. 481. (March 9, 1900.)

Complaint of unreasonable sugar rate from San Francisco to Kearney, Neb., and of preference of Omaha as regards such rate.

The sugar rate to Omaha from San Francisco was 50c. per 100 pounds, and that to Kearney, 196 miles west of Omaha, was 77c. (formerly 84c.) The Burlington & Mo. Ry. did not run through Kearney but other defendants, the Union Pac. and Southern Pac. did. At Omaha there was very strong competition between railroads and also market competition from eastern cities and from Hawaii, the latter by water and rail via New York and New Orleans. Fifty cents per 100 pounds paid scarcely more than the actual cost of the haul from San Francisco to Omaha.

Held, (Yeomans, C.), that in view of the competition a lower rate was proper to Omaha than to Kearney but that the difference was here unreasonable and should not exceed 15c. above the 50c. rate.

Order accordingly.

281-A.—Hampton Board of Trade v. Nashville, C. & St. L. R. Co., et al. 8 I. C. C. Rep. 503. (Mar. 10, 1900.)

Complaint of unreasonable rates from St. Louis, Mo., Nashville and Chattanooga, Tenn., to Hampton, Fla., of preference of Palatka, a more distant point by lower rates thereto, and of violation of Sec. 4.

Hampton, Fla., lay on the Georgia Southern and Florida Railway, about 40 miles northwest of Palatka, which was about 50 miles south of Jacksonville. Both Palatka and Jacksonville were on the

St. Johns River. There was more competition at Palatka than at Hampton, and Hampton was without water competition, but had two railroads. The Hampton rates were all based on those of Palatka, and the Palatka rates were made up of the railroad rate to Jacksonville and the river rate from there to Palatka. After the filing of the complaint in this case, the Palatka rate was reduced to a continuation of the mileage rate to Jacksonville, from which it resulted that Hampton merchants could ship to Palatka and back to Hampton cheaper than direct to Hampton. The G. S. & F. Rwy. Co. had only paid $1\frac{1}{4}\%$ on its preferred and nothing on its common stock.

Held, (Clements, C.), (a) that competition which did not reduce a rate to the long distance point below a reasonable figure would not justify the making of a higher rate for a less distance;

(b) that competition might justify a lower rate to a longer distance point without justifying rates constructed on the basing point system;

(c) that a local as part of a through rate was *prima facie* excessive;

(d) that the building up of one locality at the expense of another was one of the evils which the Act was enacted to prevent;

(e) that unprofitable financial operations were no excuse for discrimination;

(f) that in this case the competition justified a lower rate to Palatka, but the difference between the Palatka and Hampton rates was excessive;

(g) that the Hampton rate might be made higher than the Palatka rate, by the differentials existing between the Palatka and Jacksonville rates.

Order that defendants adjust their tariffs accordingly by a date fixed.

281-B.—*Interstate Commerce Commission v. Nashville, C. & St. L. R. Co., et al.* 120 Fed. 934; 57 C. C. A. Rep. 224; C. C. A. 5th Circuit. (Feb. 24, 1903.)

Appeal from C. C. S. D. Fla., dismissing bill to enforce order of Commission in above requiring defendants to cease unreasonable rates from St. Louis and Tennessee points to Hampton, Fla., and preference of Palatka, Fla.

The rates to the two points were so arranged that the combination rate on Palatka was equal to or lower than the straight through rate to Hampton, although Palatka was the more distant point. Palatka was on a navigable stream with much greater competition by rail. The Commission found that an exception to Sec. 4 was justified, but that the disparity in rates was unreasonable.

Held, (Pardee, C. J.), (a) that a finding that rates were unreasonable based on a comparison with those to a competing point was not justified and complainant had not here made out a violation of Sec. 1;

(b) that in view of the greater competition at Palatka there was no undue preference of that point.

Decree affirmed.

282.—Davis, et al. v. United States (2 cases). 104 Fed. 136; 43 C. C. A. Rep. 448; C. C. A. 6th Cir. (Oct. 2, 1900.)

Appeal from order of D. C. S. D. Oh., directing the removal of defendants for trial to the northern district of Texas, and refusing discharge on habeas corpus, in a prosecution for false billing, etc., by a shipper in violation of Sec. 10, par. 3.

The defendants did business in Cincinnati, Ohio, and delivered certain articles to carriers there for transportation to Texas, misrepresenting their contents, and so obtaining a lower rate. The goods were afterwards carried through and delivered in Texas.

Held, (Day, C. J.), (a) that the offense prohibited by Sec. 10, par. 3, was not the transportation of the goods, but the obtaining of the transportation by false and fraudulent conduct;

(b) that the offense was complete in Ohio and not triable in Texas;

Judgment reversed.

Re Belknap, 96 Fed. 614, accord. (1899.)

This was a habeas corpus in Kentucky, the district of shipment, where Ohio Court issued order of arrest and removal to Texas, the point of consignment. They were discharged.

283.—Pennsylvania State Millers Ass'n. v. Philadelphia & R. R. Co., et al. 8 I. C. C. Rep. 531. (Oct. 8, 1900.)

Complaint of discrimination and preference in favor of Philadelphia consignees against those at interior points, in time allowed for unloading.

The time allowed for unloading, at points other than Philadelphia, before demurrage was charged, was 48 hours, except as to coal, coke, pig iron and iron ore, which were allowed 72 hours. By special agreement with the Commercial Exchange of Philadelphia, the time there allowed (on grain cars only) was 96 hours (the time for other articles being 48 hours.) Defendant contended that at Philadelphia 48 hours of the 96 were taken up with the inspection, etc., required there, leaving but 48 hours of actual free time. It appeared that at interior points, part of the 48 hours was often taken up with notifying the consignees, etc., and was not all available for the actual process of unloading. To shippers at interior points, refunds of demurrage charged were often made, where there had been bad weather, etc., but by agreement none such were made at Philadelphia under the 96 hour rule. At Philadelphia 80% of shipments (including both grain and other commodities) were unloaded, without demurrage, while at interior points 98% were so unloaded. Philadelphia grain merchants were allowed ten days storage at $\frac{1}{2}$ c. per bushel, but this regulation was not published. Certain of the defendants contended

that their line was wholly within the State of Pennsylvania, and that they were not subject to the Act.

Held, (Clements, C.), (a) that railroads wholly within one State but part of a common arrangement for through transportation to or from another State were, as to such transportation, subject to the Act;

(b) that the purpose of Sec. 2 was to enforce equality among all shippers for the same service and in the transportation of a like kind of traffic, and neither the 96 hour Philadelphia rule as to grain, nor the 72 hour rule as to coal, etc., as compared to the 48 hour provision as to other commodities, was a violation of this section;

(c) that Sec. 4 covered only actual charges for transportation and not rules regulating demurrage;

(d) that the imposition of such at one locality and not at another, might, however, constitute an undue preference under Sec. 3;

(e) that although the Commission had no power to fix rates or perhaps to fix a time for unloading freight, it could issue a valid order against a road to compel it to cease an unlawful practice;

(f) that 48 hours was a reasonable time for actual unloading, but not a reasonable time where any part of it was consumed with the preliminaries necessarily antecedent to the actual process of unloading, and the rules should be so adjusted as to allow 48 hours actual unloading time as to grain at interior points (it appearing that the 96 hour rule at Philadelphia gave 48 hours actual unloading time);

(g) that the rule at Philadelphia allowing 10 days free storage at one-half cent per bushel, should be published under Sec. 6 of the Act.

234.—*Holmes & Co. v. Southern Ry., et al.* 8 I. C. C. Rep. 561, 570. (Nov. 13, 1900.)

Complaint of unreasonable rates on materials for barrels, from Memphis and points west, to Hawkinsville, Ga., of preference of Macon, Ga., a nearer point, between certain dates, and demand for reparation.

Hawkinsville was a point on a 10 mile branch line of defendant's road which left the line from Macon at a point 39 miles east of Macon, so that from the west Macon was more distant than Hawkinsville by 49 miles, 10 of which were over the branch line. Until February, 1896, rates to the west on barrel staves, etc., were the same to both points, but between that date and January, 1897, the Hawkinsville rate was 24c. and that to Macon 19c. The former relation was then restored and so continued. Brunswick, Ga., was the same distance past Macon as Hawkinsville, and took Macon rates, but Brunswick was a seaport town, and there was no traffic by water in these articles to Hawkinsville.

Held, (Prouty, C.), (a) that where a shipper had been required to pay unreasonable rates, he was entitled to recover an amount equal to that by which the rates exacted and paid exceeded reasonable rates;

(b) that the continuance by a railroad of a certain relation of rates for a long period, made that relation presumptively reasonable, and where a sudden change was made, the burden of justifying such change was on the railroads;

(c) that the action of a railroad in reducing a rate on complaint of a shipper was evidence of its unreasonableness before the reduction, but not conclusive;

(d) that in the present case the greater competition at, and the shorter distance to Macon, and the fact that Hawkinsville was on a branch line, fully justified the relation of rates during the period complained of.

Complaint dismissed.

286.—Re Alleged Unlawful Charges for Vegetables, etc. 8 I. C. C. Rep. 585. (Dec. 14, 1900.)

Investigation of alleged unreasonable rates on vegetables from certain Florida points to New York and other north-eastern cities.

It appeared that the rates in question had been increased over what they were in 1888, but charges were now by the crate and the size of the crates had been increased, but to what extent was not clearly shown. The service had been greatly improved, but the price of vegetables had fallen, while the traffic had increased. The tariffs filed did not clearly state the sized crates to which the rates per crate applied.

Held, (Yeomans, C.), (a) that the rates were not shown to be unreasonable;

(b) that the tariff should set forth clearly the standard in weight or dimensions of the crates to which the rates in question applied.

Order accordingly.

287.—Warren-Ehret Co. v. Central R. of N. J., et al. 8 I. C. C. Rep. 598. (Dec. 22, 1900.)

Complaint of unreasonable rate on slag from Leesport, Pa., to Harlem River, N. Y., and demand for reparation.

Complainant was a shipper of slag from Leesport to Harlem River Station, a distance of 168 miles. Leesport was on the Philadelphia & Reading, near the defendant's road. From Communipaw slag was put on car floats of the New York, New Haven & Hartford, which ran to Communipaw, N. J., and taken to Harlem Station. The distance from Communipaw to Harlem Station was 13 miles. The rate per ton from all points between Communipaw and Harrisburg, to all points between Harlem River Station and Hartford (including Waterbury, 87 miles beyond Harlem River) was \$3.40, divided as follows: \$1.30 to Central Railroad of New Jersey, for 155 miles, and \$2.10 to New York, New Haven & Hartford, for 13 miles to Harlem River Station (or more if beyond.) The Harlem River rates were complained of, it appearing that 80c. was the usual rate for the service rendered by the N. Y., N. H. & H. R. for \$2.10. Complainant asked a refund on two loads of slag.

Held, (Yeomans, C.), (a) that the P. & R. was not a necessary party, although it would have been a proper one;

(b) that although the shipper was concerned only with the reasonableness of the total joint rate as a whole, the division of the total rate among the carriers was often significant, as here, in determining the reasonableness of the aggregate charge;

(c) that \$1.00 for lighterage from Communipaw to Harlem River Station was a sufficient charge, and hence \$2.30 was sufficient for the whole rate;

(d) that reparation be granted to complainant.

Order accordingly.

288.—**Kindel v. Atchison, T. & S. F. R. Co., et al.** 8 I. C. C. Rep. 608. (Dec. 27, 1900.)

Complaint of unreasonable rates to Denver from San Francisco, of preference of eastern points, and of violation of Sec. 4.

Since February, 1900, west-bound rates had been the same to San Francisco from Denver as from Missouri River points, but on many commodities east-bound rates to Denver were higher than those to Missouri and Mississippi River points, and even than those to Chicago and New York. Water and market competition were alleged by defendants as a justification, but the Missouri River rates were in no case higher than those to or from New York, and there was no traffic by water to such Missouri River points. There was market competition, however, between New York and Missouri River shippers, thus forcing the Missouri River rates down to those at New York, where there was competition by water. Defendants claimed that complainant was in no wise injured by the existing relation of rates.

Held, (Prouty, C.), (a) that a railroad was not justified in discriminating against a locality or individual because of lack of direct injury to such locality or person resulting from the discrimination, and that the denial of a legal right was in itself an injury;

(b) that in view of the water and market competition at New York and Chicago, the Denver rates from San Francisco should not exceed those to these cities, but that they need not be less than the Chicago or Norfolk rates, since rates could not always be made with a yard stick;

(c) that as to sugar, however, the Denver rate was properly 60c., while that to the Missouri River was but 50c.;

(d) that claims as regards rates on specific articles should be heard later, the case remaining open for this purpose.

Order accordingly.

289.—**McGrew v. Missouri Pacific R. Co.** 8 I. C. C. Rep. 630. (Feb. 8, 1901.)

Complaint of unreasonable differential in favor of Rich Hill, Mo., against Myrick, Mo., in coal rates to the west.

Complainant had a mine at Myrick and defendant owned all the stock in one at Rich Hill, Mo. Myrick was situated on a branch line, 31 miles east of Independence, Mo., and Rich Hill on another branch, 74 miles south of Independence, so that to western points Myrick was nearly 43 miles nearer all western shipments from both mines proceeding by the same line from Independence. To Atchison, Kas., (88 miles from Myrick and 131 miles from Rich Hill), there was and had long been a 15c. per ton differential in favor of Myrick, but to points beyond Atchison there was either no differential at all or else one against Myrick. On run-of-mine coal (used for making steam) there was a special low rate from Rich Hill, while there was no such special rate from Myrick; but no steam coal was ever produced at or shipped from Myrick. The cost of mining coal at Myrick was greater than at Rich Hill, but the Myrick coal was of a higher grade, and brought better prices. Rates to Kansas City from Myrick were also complained of as unreasonable.

Held, (Prouty, C.), (a) that the evidence as to the rate to Kansas City was too indefinite to form a basis for a finding as to reasonableness;

(b) that in making rates, distance was not the sole consideration, and the 15c. differential need not be maintained to distant points, but some differential was proper to such points, which should be 10c. to a certain point named, and 5c. to points beyond;

(c) that a lower rate on run-of-mine coal from Rich Hill was proper, and complainant was in no way injured by the absence of such a rate at Myrick;

(d) that the only means of protecting other shippers from discriminations in favor of a corporation owned by a railroad was to see to it that the rate given to others was reasonable, and if the adjustment of the differential ordered was brought about by raising the Rich Hill rate, this would probably not produce a condition satisfactory to the Commission;

(e) that reparation be awarded complainant of the amounts paid in excess of the rate from Myrick, as it would be, after adjustment of the differentials ordered, below the then rate from Rich Hill;

(f) (semble) that if the lesser value of the Rich Hill coal was to be considered as entitling that coal to a lower rate, the greater cost of mining the Myrick coal was also a consideration in favor of a low rate from Myrick.

Order accordingly.

290.—*Carr v. Northern Pac. R. Co.* 9 I. C. C. Rep. 1. (April 1, 1901.)

Complaint by travelling salesman of defendant's refusal to continue to allow him the same private car rates accorded to hunting parties and theatre troupes.

During the summer of 1898 the complainant had bought a Pullman car and fitted it up as a sample room. Defendant hauled it for him from St. Paul to Portland, Ore., allowing him as many stop-overs as he wished and charging him fifteen St. Paul-Portland full fares. He went from place to place advertising before his arrival, and at each point had the car put on a siding and displayed his goods there. The next summer he wished to repeat the trip, but other jobbers having complained, defendant charged him 15 fares between each stop, though they still charged hunting parties and theatre troupes but 15 through fares. Defendants published no private car rates.

Held, (Knapp, C.), (a) that complainant's right did not depend on the wishes of his competitors, nor could the compensation paid by him be justly conditioned on his routing his traffic over defendant's line;

(b) that the Commission was generally opposed to private car rates since such were available to a few only;

(c) that if a railroad gave such rates to one it must accord them to all similarly situated, but that the cost to defendant and the value of the service to the passenger was less in case of hunting parties and theatre troupes than to the complainant and justified defendant in refusing him the cheap through rate;

(d) that private car rates, where allowed, should appear on the published tariff.

Complaint dismissed.

291.—*Hilton Lumber Co. v. Wilmington & W. R. Co., et al.* 9 I. C. C. Rep. 17. (April 10, 1901.)

Complaint of unreasonable lumber rates from Wilmington, N. C., to New York, and of preference and discrimination in favor of shippers at intermediate points.

Wilmington was 240 miles south of Norfolk, Va. Through rates from Wilmington and points between it and Norfolk, were made by combinations of certain arbitraries or proportional rates, which the roads could alter without the consent of connecting roads. From Wilmington to Norfolk, the local rate on lumber of 10½c. per 100 pounds, was ½c. greater than the proportional rate in force on New York shipments, but the rate from Norfolk to New York was from 1c. to 4c. less than the proportional in force on shipments from points south of Norfolk. Competition at Norfolk was stronger, and although Wilmington was situated on a navigable river, complainant's lumber was easily damaged by water. Between the hearing and the decision in this case, defendants had made a reduction in the proportional south of Norfolk, which extended to within 8 miles of, but did not include Wilmington; by this same tariff, also, the proportional from Norfolk was reduced to 8c. on New York shipments, while on those to Jersey City it was 10c.

Held, (Yeomans, C.), (a) that the two latter conditions should be

explained by defendants by supplemental answer within 20 days;

(b) that where, as here, the sum of the local rates exceeded the through rate, the latter was *prima facie* unjust under the first three sections of the Act, as such a condition was justified only in exceptional cases, such as where local rates were regulated by state laws, as was not the case here;

(c) that the through rate from Wilmington should not exceed the sum of the locals to and from Norfolk;

(d) that as the two proportionals were independent of one another the Commission could consider them separately.

Order in accordance with the foregoing conclusions, suspended for 20 days.

292.—**Holdzkom v. Michigan, Cent. R. Co., et al.** 9 I. C. C. Rep. 42. (April 13, 1901.)

Complaint of unreasonable rate on buggies from Michigan points to San Bernardino, Cal., of preference of Los Angeles, a more distant point, on the same line, and violation of Sec. 4.

San Bernardino was 60 miles east of Los Angeles and the rate on buggies from Michigan points was the rate to Los Angeles plus the local rate back from Los Angeles to San Bernardino, although shipments were on through bills of lading. Los Angeles was 20 miles from the nearest port and rates there via water and rail from New York were somewhat higher than the ocean rates to San Francisco, a sea-port city. Buggies were good ocean freight, if properly packed, since the length of the time of transit was of no importance, buggies being bought cheapest in the fall and sold best in the spring. Los Angeles was classed by the railroads as a Pacific Coast Terminal Point and took San Francisco rail rates. It was a considerably larger town than San Bernardino.

Held, (Prouty, C.), (a) that the fact that Los Angeles was a larger town than San Bernardino did not entitle it to better rates;

(b) that although strictly the Los Angeles rate should be higher than that to San Francisco, by reason of Los Angeles being inland and to that extent removed from the effect of the ocean competition, yet the Commission would not disturb the relation, since all southern California was benefited by the low rate to Los Angeles;

(c) that ocean competition thus controlling the Los Angeles rate and not that to San Bernardino, the latter rate might properly be higher;

(d) that although ordinarily competition did not justify a difference of the full local rate, yet since in the present case rates were determined by ocean competition, a force beyond the railroads' control, and since, from the evidence, the Commission was unable to find that the San Bernardino rate was either reasonable or unreasonable, the complaint should be dismissed.

Clements, C., dissented, on the ground that this was not one of the

extremely rare cases where the facts warranted a difference of the full local between the through rates to rival localities.

293.—Palmers Dock, Hay, etc., Exch. v. Pennsylvania R. R. Co. 9 I. C. C. Rep. 61. (April 26, 1901.)

Complaint of refusal of defendant to allow track delivery of hay at Brooklyn as formerly.

Between the establishment of defendant's Brooklyn Freight Station in 1888, and 1897, defendant carried hay coming to Jersey City from the south and destined to Brooklyn, (where complainants did business) by float to its Brooklyn terminus, and delivered it to the consignees on side tracks. By 1897, however, the increase of traffic had so congested the terminal facilities that sometimes as many as 150 cars would be waiting their turn at Jersey City. Hay constituted about one-half the traffic there, and in 1897, in order to relieve the congestion, defendant discontinued the side track delivery of hay, although continuing it as to other commodities. Even with this change, the facilities at Brooklyn (which could not be enlarged) were considerably over-taxed. After 1897 hay was delivered at the docks, complainant having one of its own.

Held, (Knapp, Ch.), that defendant was not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic and in view of the facts, the rule complained of was a reasonable exercise of the carrier's discretion.

Complaint dismissed.

294.—Lundquist, et al. v. Grand Tr. W. R. Co., et al. 121 Fed. 915; C. C. N. D. Ill., N. D. (July 18, 1901.)

Motion for preliminary injunction to restrain defendants from enforcing a rule whereby carload rates were refused to forwarding agents who had collected shipments from various shippers.

The defendants urged, *inter alia*, that to allow complainants carload rates induced a violation of the Act by complainants' giving different rates to their different customers. They also contended that the circumstances were different in that in case of complainants' shipments of carloads, defendants were liable to a number of suits for damages, while in case of a carload shipment by one owner there could be but one suit.

Held, (Kohlsaat, D. J.), (a) that the common law did not oblige a carrier to treat all shippers alike, but simply to make reasonable carrying charges to all;

(b) that the conditions here were dissimilar and the discrimination hence not unjust.

Preliminary injunction denied.

295.—Dallas Freight Bureau, et al. v. Austin & N. W. R. Co., et al. 9 I. C. C. Rep. 68. (Oct. 19, 1901.)

Complaint, under Sec. 4, of higher rates from the north and east

of Dallas and Fort Worth than to Houston and Galveston, points 300 miles more distant on the same line.

There was strong water and market competition at Houston and Galveston.

Held, (Knapp, Ch.), (a) that the later United States cases held that competition of all kinds was an important factor in determining dissimilarity of circumstances and conditions;

(b) that on the evidence the Commission could not find that the circumstances and conditions were or were not substantially similar;

(c) that the complaint must, therefore, be dismissed.

296.—Myer v. Cleveland, C., C. & St. L. R. Co., et al. 9 I. C. C. Rep. 78. (Nov. 27, 1901.)

Complaint of unreasonable rate and classification of hatters' furs and scraps, from the Atlantic coast to Wabash, Ind., and of preference of eastern hat manufacturers by lower rates on finished hats.

Complainant was the only hat manufacturer west of the Atlantic Sea-board Territory. Hatters' furs and scraps, from which finished hats were made by complainant, were classed as double first class, while finished hats were first class, although the former were twice as heavy for the space occupied, were less valuable per pound and less likely to sustain damage in transit. If complainant had had first class rates on his materials he would have saved \$1000 per year.

Held, (Prouty, C.), (a) that "what the traffic would bear," and "the value of the service" were not the sole considerations in fixing rates;

(b) that the materials and hats in question were competitive articles and a fair relation of rates between them was essential;

(c) that the Commission had power to alter an unreasonable classification, the regulation of a rate relation between competitive commodities being a different matter from the fixing of maximum rates.

Order accordingly.

297.—National Wholesale Lumber Dealers' Ass'n. v. Norfolk & W. R. Co., et al. 9 I. C. C. Rep. 87. (Dec. 11, 1901.)

Complaint of unreasonable rates on lumber from points on the Norfolk & Western R. Co. to New York.

The Virginia and West Virginia lumber district was served by the Chesapeake & Ohio, the Baltimore & Ohio and the Norfolk & Western R. Co., roads running parallel through the territory. Each connected with the Penna. R. R., which took the lumber on to New York and Philadelphia. The share of the through rate received by the Norfolk & Western to the junction point had been raised 1½c. per 100 pounds during 1899-1900. In 1893 the share received by the Penna. R. R. from the Norfolk & Western and Baltimore & Ohio had been increased by 1c. The lumber rates from Norfolk & Western points were higher as a rule than from points an equal distance on the

Baltimore & Ohio and Chesapeake & Ohio. Also the Chesapeake & Ohio received less as its share of the through rate to New York than it did to Philadelphia, while the amount received by the Norfolk & Western was in each case the same. The share received by the Penna. R. R. on shipments by the Baltimore & Ohio, and Chesapeake & Ohio was 6c. less to Philadelphia than to New York, while on shipments from the Norfolk & Western it was but 3.2c. less. The Norfolk & Western was somewhat more circuitous and with steeper grades than the Chesapeake & Ohio or Baltimore & Ohio, and was not in strong competition with the trunk lines. Its general rates were also lower, but the bulk of its tonnage was made up of articles which everywhere took very low rates.

Held, (Knapp, Ch.), (a) that the rates in question were unreasonable to the extent of the advances of 1½c. by the Norfolk & Western and of 1c. by the Penna. R. R. in shipments from the Norfolk & Western and Baltimore & Ohio;

(b) that they should be adjusted accordingly, but if the total through rate were so lowered it was immaterial how the adjustment of the reduction was made in the apportionment of the through rate among the several roads.

Order accordingly.

298-A.—Wilmington Tariff Ass'n. v. Cincinnati, P. & V. R. Co.
9 I. C. C. Rep. 118. (Dec. 17, 1901.)

Complaint of unreasonable rates from western points to Wilmington, N. C., and of preference of Norfolk, Va.

Wilmington, N. C., was situated near the coast, 240 miles south of Norfolk, Va. It had a good harbor, and steamship lines to Norfolk and New York. The distance by the shortest line from Cincinnati or Chicago to Norfolk was about 60 miles less than from Cincinnati to Wilmington. From Louisville the distance to Wilmington was shorter than that to Norfolk. The rates from Louisville and Cincinnati to Wilmington were 135 per cent. of those to Norfolk, but were less than the sum of the locals on Norfolk, as the roads between Norfolk and Wilmington allowed a proportional rate on Wilmington business, less than their straight rate from Norfolk. From East St. Louis the difference in favor of Norfolk was greater, but not so as to make the total rate equal to the sum of the locals. From Chicago it was equal to the sum of the locals, due, it was alleged, to the competition via New York. The rate from Chicago to Wilmington was, however, greater than that to New York plus the water rate to Wilmington. Packing-house products were exceptions to all the above rates, and as to such products Wilmington rates were much nearer those to Norfolk.

Held, (Clements, C.), (a) that before a carrier could be required to adjust an alleged preference of a given locality, it must be shown that such preference resulted from its wrongful action;

(b) that the Cincinnati and Louisville relative rates were proper,

but the rates from Chicago and St. Louis were unreasonable and unjust, and not justified by competition, and all the rates should be placed on the 135 per cent basis;

(c) that if the "lowest combination" was ever to be applied, it should be published.

Order accordingly. (Suspended for 40 days for voluntary adjustment of rates by defendant).

298-B.—Interstate Commerce Commission v. Cincinnati, P. & V. R. Co., et al. 124 Fed. 624; C. C. E. D. N. C. (Aug. 10, 1903.)

Bill to enforce order issued in above, requiring defendants to desist from unreasonable rates from Chicago and St. Louis to Wilmington, N. C., and from preference of Norfolk and Richmond, Va., in respect to such rates.

Complaint had been made of rates from Cincinnati and Louisville as well as those from Chicago and St. Louis, but as to the former the Commission had held that no undue preference existed. On traffic for Richmond or Norfolk the roads west of the Ohio accepted low rates, while on that for Wilmington they charged substantially their local rates. It was to this fact that the Commission ascribed the unreasonableness of the whole charge on through shipments to Wilmington and the preference of Norfolk and Richmond. The latter were points in the trunk line territory, at which competition was very active, while Wilmington was in the southern territory, where the competition was very much less severe. The Commission's order required defendants to cease from charges to Wilmington which were more than 135% of those to Norfolk and Richmond.

Held, (Purnell, D. J.), (a) that the part of the order requiring defendants to desist from charges greater than 135% of the Norfolk rate was an attempt to fix maximum rates beyond the power of the Commission;

(b) that in view of the greater competition at Norfolk and Richmond the rates in question to Wilmington were not unreasonable or discriminating;

(c) that although the findings of the Commission were entitled to great weight, it was the Court's duty to exercise its own judgment, it being necessary for the Commission, in order to secure the aid of the Court, to make out a case for relief like any other litigant.

Bill dismissed.

300-A.—Central Stock Yards Co. v. Louisville & N. R. Co. 112 Fed. 823; C. C. W. D. Ky (Jan. 23, 1902.)

Application for preliminary injunction. (See 300-B, for facts.)

Held, (Evans, D. J.), that the remedies specified in Secs. 8 and 9 for violations of Sec. 3, were exclusive and consisted in a suit at law for damages, or an application to the Commission for relief with a

suit in equity to enforce its findings and a bill for an injunction would not lie prior to application to the Commission.

Motion denied.

300-B.—Central Stock Yards Co. v. Louisville & N. R. Co. 118 Fed. 113; 63 L. R. A. 213; 55 C. C. A. 63; C. C. A. 6th Circuit. (July 8, 1902.)

Appeal from order of C. C. W. D. Ky., dismissing for want of jurisdiction a bill requiring defendant to receive and transport to its connecting point with the Southern R. Co., live stock consigned to the Central Stock Yards, on the line of the Southern R. Company.

The Bourbon Stock Yards were situated on defendant's line, and it had a contract with them whereby it agreed to use the Bourbon Yards as its exclusive live stock depot. Later the Central Yards were established on the line of the Southern R. Co., under a similar agreement and the Louisville & Nashville R. Co. refused to receive live stock consigned to the Central Yards or to deliver them to the Southern R. Co. at the junction point.

Held, (Day, C. J.), (a) that although it was defendant's duty to provide a proper live stock depot, this duty might properly be discharged by contracting with one not a carrier to furnish the necessary facilities;

(b) that it was not a violation of the first paragraph of Sec. 3 to make an exclusive contract with the Bourbon Yards;

(c) that defendant had a right to refuse to exchange traffic with the Southern R. Co., and the Court had no power to require it to do so.

Judgment affirmed.

Affirmed 192 U. S. 568, in an opinion by Holmes, J.

301.—Mayor & Council of Tifton v. Louisville & Nashville R. Co. 9 I. C. C. Rep. 160. (March 27, 1902.)

Complaint of unreasonable rates to Tifton, Ga., of preference of Albany and Valdosta, Ga., nearby towns, and violation of Sec. 4.

Tifton was 41 miles east of Albany and 46 miles northeast of Valdosta. The basing points in this territory were Albany, Americus, Cordele and Dawson (the latter since the decision in Dawson Board of Trade v. Cent. of Ga., 8 I. C. C. Rep. 142, (262), rates to such points being materially lower than either to Tifton or to Valdosta. Rates to Valdosta were lower than those to Tifton. All these towns were of about equal size and substantially the same competitive conditions existed at each. As regards some commodities, Tifton had lower rates in each direction than those to points more distant than Tifton.

Held, (Clements, C.), (a) that although under the Federal decisions competition among railroads subject to the Act might be a justification of a preference or of a greater charge for a shorter dis-

tance, this did not apply where the railroads arbitrarily, by agreement among themselves, stifled competition at one point and allowed it to continue at another;

(b) that as regards shipments from the east, Tifton should have as low rates as those to Albany and from the west as low as those to Valdosta, but this decision did not authorize an increase of such of the Tifton rates as were lower than those to points more distant.

Order accordingly.

302-A.—Consolidated Forwarding Co. v. Southern Pacific Co., et al. 9 I. C. C. Rep. 182. (April 19, 1902.)

Complaint of defendants' refusal to route oranges from California to the east as directed by shippers, and of discrimination in employing certain refrigerator cars.

The Southern Pacific and Santa Fe were the only initial carriers from Southern California. Prior to 1900, orange shippers were allowed to designate their own routing and to divert a car en route wherever they found a good market, paying only the lowest existing rate on the actual haul made. In 1900 the tariffs filed stated that the continuance of the through rate of \$1.25 per 100 pounds to the Atlantic Coast was conditioned on the initial roads reserving the right to fix the routing. This the Commission found to be the result of a pooling arrangement, and in order to enable the roads to distribute the traffic among themselves. The rate had always been \$1.25, although the trade had largely increased, but the rate was originally made very low in order to build up the business. The service had been greatly improved. Cost of refrigeration en route was charged in addition to the rate, and the roads which owned no refrigerator cars hired these from private companies, almost all those employed belonging to a man who was an extensive orange shipper. There was evidence as to the cost and profit of raising and shipping oranges.

Held, (Clements, C.), (a) that ordinarily a railroad was bound to route traffic as designated by the shipper;

(b) that although through routes and rates were the subject of agreement by connecting carriers, if such were established they must be in accordance with the provisions of the Act, and open to the public;

(c) that Sec. 6 provided for the publication of two classes of rates, those over one line, and those over more than one, and none of such published rates might be altered without the required notice;

(d) that if a given routing might be altered at will by the railroad, the published route and rate would be open to shippers or not at the option of the carrier, thus violating Sec. 6, and opening the door to discrimination;

(e) that there was no such thing as a conditional route or rate;

(f) that a carrier might hire its equipment from whom it pleased and to hire all from one shipper was no discrimination;

(g) that the evidence as to the reasonableness of rates, refrigeration charges, minimum carload weights, etc., was too meagre to warrant a finding, and these questions were reserved until more evidence was presented.

Knapp, Ch., dissented, on the ground;

(a) that the initial carrier had the right to reserve the privilege of routing, since this system prevented rebates;

(b) that the shipper had no right to divert cars en route, as above;

(c) that the Act did not apply to refrigeration charges.

302-B.—Interstate Commerce Commission v. Southern Pac. Co., et al. 123 Fed. 597. C. C. S. D. Cal. S. D. (June 1, 1903.)

Demurrers to bill to enforce order issued in above, requiring defendant to discontinue rule by which shippers of oranges, etc., to the east were denied the right, under through rates, of routing the freight beyond defendant's line, and requiring them to keep all routes east open to all shippers.

In order to put a stop to rebating by connecting carriers and also, as would appear from the opinion, to make effective a pooling agreement between the Southern Pacific and the Santa Fe, as to this traffic these roads stipulated in the shipping agreement to allow a through route and rate only on condition that they reserve the right to route the traffic beyond their own lines. The connecting lines were not joined as parties. The Commission found that the practice subjected shippers to undue discrimination, giving the carriers an undue preference; also that stopping rebates was only an incidental result, the real purpose being the giving effect to the tonnage division between the two defendants.

Held, (Wellborn, D. J.), (a) that the connecting carriers joining in the through rates were proper but not necessary parties;

(b) that the findings by the Commission that the rule subjected shippers to undue discrimination were findings of fact, and an order to desist from the practice producing this result was, therefore, proper under Sec. 3;

(c) that the finding that a tonnage pool existed in respect to this traffic was relevant and material under the pleadings;

(d) that on demurrer to a bill filed by the Commission to enforce its order any substantial doubt should be resolved in favor of the lawfulness of the order.

Demurrers overruled.

302-C.—Interstate Commerce Commission v. Southern Pacific Co., et al. 132 Fed. 829. C. C. S. D. Cal. S. D. (Sept. 6, 1904.)

Opinion in above on final hearing.

It appeared that the real purpose and object of the rule was to

stop rebating by the connecting roads and by the refrigerator car companies, which had become a great abuse. The rule did this.

Held, (Wellborn, D. J.), (a) that the issue here raised was not confined merely to questions of discrimination or to the reasons or grounds assigned by the Commission, but extended to every possible violation of the Act (under the finding by the Commission that the rule violated the statute);

(b) that the real question was whether the routing provision amounted to a contract or combination for the pooling of freight;

(c) that Sec. 5 prohibited contracts to divide earnings whether an actual division took place or not;

(d) that the word "freights" in Sec. 5 referred to the commodities carried and not to the compensation for carriage;

(e) that the routing contract was a pool and was not legalized by the fact that it was designed and tended to stop rebating;

(f) that the order in question was one within the power of the Commission, it not being one prescribing rates or any rule of action;

(g) that the fact that the complaining shippers did not perhaps come in with clean hands was immaterial.

Defendants enjoined from disobeying the order.

302-D.—Interstate Commerce Commission v. Southern Pac. Co., et al. 137 Fed. 606. (Dec. 12, 1904.)

Motion by defendant to supersede the decree in the above, pending the appeal.

Held, (Wellborn, D. J.), (a) that Sec. 16 providing that in proceedings to enforce the order of the Commission, an appeal should not operate to stay the order of the Court appealed from, did not affect the power of the Court, under equity rule 93, to grant a stay in its discretion;

(b) that in the present case, since it appeared that defendants would suffer no more by a refusal of such a stay than complainants would gain by its allowance, it would be refused.

Motion denied.

302-E.—Southern Pacific Co., et al. v. Interstate Commerce Commission. 200 U. S. 536; 50 L. Ed. 585; 26 S. Ct. Rep. 330. (February 26, 1906.)

Appeal from above.

It did not appear that any contract existed between the initial and connecting carriers, that the former should bill the fruit according to certain agreed proportions among the latter.

Held, (Peckham, J.), (a) that the object of Congress in enacting the Interstate Commerce Act was to facilitate and promote commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences and discriminations;

(b) that, although if a rule adopted for the purpose of stopping

rebating operated to violate another section of the statute it would be illegal, courts would not lean to such a construction;

(c) that the rule did not in fact effect an undue preference of the carriers over the shippers even though under its administration a violation of the Act might possibly occur;

(d) that it did not effect an illegal preference of shippers of other non-competitive commodities;

(e) that an order of the Commission might be supported on grounds other than those stated by the Commission, the courts not being confined to the reasoning of the Commission;

(f) that the fact that in the through tariff the initial carrier reserved the right to route the freight did not constitute a pool under Sec. 5;

(g) that the initial and connecting carriers were not "competing roads" within the meaning of Sec. 5.

(h) (semble) that a rule giving the carrier an undue preference in its capacity as carrier, was forbidden by Sec. 3.

Decree reversed.

303.—Hawkins v. Lake Shore & M. S. Railway Co., et al. 9 I. C. C. Rep. 207, 212. (April 23, 1902.)

Complaint of discrimination in cars for hay from Collins, Ohio.

Collins, Tipton and other small Ohio towns were non-competitive points, while at Norwalk, Ohio, defendant's road was crossed by another road. During a car famine very few cars were given to the non-competitive towns, while at Norwalk they were given freely. Also, at the non-competitive points cars were given other shippers whose orders for cars were put in after complainant's. He suffered \$200 damage through exposure of hay to the weather, and \$100 through a fall in price.

Held, (Prouty, C.), (a) that although the Commission would not prescribe any hard and fast rules to govern railroads during times of car famine, at such times they must do their best, and favor neither places nor persons;

(b) that \$300 damages be awarded complainant by reason of the discrimination proved.

Order accordingly.

304.—Red Cloud Mining Co. v. Southern Pac. Co. 9 I. C. C. Rep. 216. (April 30, 1902.)

Complaint of unreasonable rate on machinery from Erie, Pa., to Salton, Cal., and demand for reparation.

Salton was 155 miles southeast of Los Angeles, Cal. The agent at Los Angeles probably agreed (the evidence on this point not being clear) to ship a carload of machinery from Erie to complainant at Salton, at \$1.25 per 100 pounds, this being the commodity rate on machinery to Los Angeles. There was no commodity rate on machinery to Salton, the class rate being \$2.08. The local rate from Los

Angeles to Salton was 52c., so that the lowest tariff rate to Salton was the combination rate of \$1.77, at which rate the total charge on the carload shipped was \$481.44, instead of \$340, which complainant claimed his contract entitled him to. The \$481.44 was exacted by defendant and complainant demanded the excess of \$141.44.

Held, (Knapp, Ch.), (a) that while the contract had not been satisfactorily proved, even if it were admitted it would not be enforceable, since it called for a rate below that in the tariff, which it was the duty of the defendant to enforce;

(b) that the \$1.77 rate to Salton was presumptively reasonable, although made up of the sum of a through and a local rate.

Complaint dismissed.

Clements, C., dissented from the second conclusion above, on the ground that a through rate made up of the sum of a through and a local rate was presumptively unreasonable.

305.—*Johnson v. Chicago S. P. and M. & O., et al.* 9 I. P. P. Rep. 221. (May 7, 1902.)

Complaint of unreasonable rates from Chicago and Duluth to Norfolk, Neb., and preference of neighboring towns by publishing through rates to them and not to Norfolk.

Complainant was a merchant at Norfolk, 47 miles southwest of Emerson, Neb., and 50 miles north of Columbus, Neb. Emerson was between Lincoln and Sioux City, and on the way from Norfolk to Duluth by defendant's road. The defendant refused to publish through tariffs from Chicago to Norfolk, although it published such to all points in the vicinity of Norfolk. Columbus was somewhat nearer than Norfolk to Chicago by short line, but received much better rates. Emerson, being between Sioux City and Lincoln, took Lincoln rates, which were 5c. per hundred pounds above the rate to Missouri River points. The Emerson rate was 80c., while that to Norfolk was \$1.22, the Norfolk rates from Chicago being the Missouri River rate plus the local west from the Missouri River. No city in Nebraska of Norfolk's size received rates anything like so high. The rate to the Missouri River was at the rate of .68c. per ton mile, while beyond the river it was 19.56c. per ton mile. Defendant did not post its tariff sheets, but posted a notice referring shippers to the agent for rates.

Held, (Yeoman's, C.), (a) that the failure by defendant to publish through rates to Norfolk while publishing such to towns of the same and similar population in the vicinity, was an undue preference against Norfolk.

(b) that a notice referring shippers to the agents for rates was not a compliance with the requirements of Sec. 6 as to posting rates;

(c) that although railroads were not bound to conduct their business at a loss, yet if .68c. per ton mile was a profitable rate to the Missouri River, 19.56c. was certainly an unreasonable rate for the haul beyond;

(d) that rates to Norfolk from Chicago need not be as low as those to Lincoln and Omaha, but should not be higher than those to Columbus, which was a similar town, although somewhat nearer;

(e) that rates from Duluth to Norfolk should not be higher than the rates to Emerson plus the local from Emerson to Norfolk;

(f) that no reparation would be ordered, since the evidence was not specific enough, and since the defendant was in a poor financial condition during the period complained of.

Order accordingly.

Prouty, C., dissented as to the rate from Duluth on the ground that a through rate should never be as great as the sum of two locals, citing cases.

306.—Phoenix Shippers Union v. Atchison, T. & S. F. R. R. Co.
9 I. C. C. Rep. 250. (June 4, 1902.)

Complaint of unreasonable rates from eastern points to Phoenix, Ariz., an intermediate point en route to the Pacific Coast, and of preference of points nearer the Pacific.

Phoenix, with a population of 15,000, lay 196 miles south of Ash Fork, which was on the Atchison, Topeka & Santa Fe R. R., and 34 miles north of Maricopa, on the Southern Pacific R. R. Rates from most points between the Missouri River and New York were made up by adding the local rate back from Los Angeles. The neighborhood was sparsely populated, and there was competition by sea to Los Angeles.

Held, (Fifer, C.), that since transcontinental rates were all interrelated as part of one system, the Commission was unwilling to disturb them without a clear showing of the necessity thereof, and without all the roads concerned being before it, and that this is not a favorable case for adjustment of such rates.

Clements, C., concurred, since the questions of law and fact were left open.

308-A.—Harp v. Choctaw, O. & G. R. Co. 118 Fed. 169. C. C. W. D. Ark. Ft. S. D. (Aug. 1, 1902.)

Charge to jury directing verdict for defendant in suit for damages for discrimination, preference, etc., in defendant's refusal to furnish coal cars to be loaded from wagons at certain points, or to put in a private spur track for plaintiff.

When the road was at first opened, defendant had permitted plaintiff and others to load coal from wagons on cars standing at its switches at the station. Soon, however, the traffic increased very greatly and defendant refused to allow the continuance of the practice, although they allowed the loading of cars from wagons on private switches and also from tipples. They also refused to put in a private switch for complainant, although they did so for others, but the latter paid part of the expenses and plaintiff wanted his switch in an inconvenient place. Subsequently defendant revoked the rule

as to east-bound shipments, still refusing, however, to allow the loading in this way of west-bound cars.

Held, (Rogers, D. J.), (a) that the Act did not require a railroad to engage in a particular form of transportation or regulate its method of transportation, but simply required that what it did for one it must do for all under like circumstances;

(b) that the circumstances here were not similar and defendant was justified in its action;

(c) that it was not defendant's duty to build the spur track in question.

308-B.—Harp v. Choctaw, O. & G. R. Co. 125 Fed. 445; 61 C. C. A. Rep. 405; C. C. A. 8th Circuit. (Oct. 16, 1903.)

Appeal from C. C. W. D. Ark., from direction of verdict for defendant in suit for damages for defendant's refusal to put in a private switch for plaintiff, or to allow loading of coal cars on its switches from wagons, while allowing such on private switches or from tipples.

Held, (Thayer, C. J.), (a) that a common carrier was entitled to establish or modify reasonable rules governing the manner and form in which it would receive such articles as it held itself out as ready to transport;

(b) that by allowing the privilege of loading from wagons at first it was not estopped from altering this when business increased;

(c) that no undue preference or discrimination appeared in this case.

Judgment affirmed.

309-A.—National Hay Association v. Lake Shore & M. S. R. Co., et al. 9 I. C. C. Rep. 264. (Oct. 16, 1902.)

Complaint of unreasonable rate and classification of hay from Chicago to the Atlantic Coast.

Hay had been in sixth class at 25c. per 100 pounds until January, 1900, when it was raised to fifth class at 30c., a difference of \$1.00 per ton. At New York hay sold for about \$15 per ton. The selling commission there was \$1.00 per ton and other expenses \$2.00 per ton. There was in force a \$4.00 per ton import tariff which at the old rate kept out Canadian hay. Under the new classification this hay began to compete, and the western hay was forced out of the market. All other articles in the fifth class were merchandise articles much more valuable than hay, and grains all had special commodity rates. The hay tonnage was very heavy and no article with so large a tonnage took so high a rate. It took longer to load hay than grain, and a car could not be loaded so heavily, but hay shipments averaged shorter hauls than grain, so that although the average freight received on a car of grain for a given distance was much greater than on hay, the average receipts per car-mile were less. Transportation expenses had increased in recent years.

Held, (Clements, C.), (a) that where a rate had long been maintained, an advance in it must be satisfactorily explained by the roads making such advance;

(b) that although increased operating expenses often justified advances in rates, such advances must be distributed over the entire traffic and could not be loaded on one community;

(c) that hay was not properly in fifth class and should be put back again in sixth class.

Order accordingly.

309-B.—Interstate Commerce Commission v. Lake Shore & M. S. R. Co., et al. 134 Fed. 942; C. C. N. D. Oh. E. D. (Aff. by divided Ct., 202 U. S. 613.) (Jan. 27, 1904.)

Bill to enforce order of Commission in above, requiring defendants to cease from classifying hay and straw as fifth class (30c. per 100 pounds) and to cease from failing and neglecting to classify them as sixth class (25c. per 100 pounds.)

Held, (Wing, D. J.), (a) that the order requiring defendants to cease from neglecting to classify hay as sixth class was really an attempt to fix rates, and was not a lawful order which, under Sec. 16, the Court was empowered to enforce;

(b) that under Section 16 of the Act the Court had no power to alter or modify an order by the Commission;

(c) that the order in question was not separable into a lawful and unlawful part, but must be treated as an entirety, so that the Court could not here enforce that part of it requiring defendants to cease from charging fifth class rates, while refusing to require them to put sixth class rates in force.

Bill dismissed.

310.—Diamond Mills v. Boston & Maine R. Co. 9 I. C. C. Rep. 311. (Nov. 17, 1902.)

Demand for reparation on grain shipment from Buffalo to New England.

Complainant had a mill in Buffalo. The Lake Shore & Mich. Southern R. R. hauled grain from Chicago to Buffalo. From Buffalo it was taken by other routes to Rotterdam Junction, N. Y., where the defendant took it to New England points. The L. S. & M. S. published a tariff showing a through rate from Chicago to Boston of 19½c. per 100 pounds, allowing milling-in-transit on its line for 1½c. additional, making a total milling-in-transit rate of 21c. The rate from Chicago to Buffalo was 11c., and from Buffalo to Boston via the defendant's line 12c., giving an advantage of 2c. by the through rate with the milling-in-transit privilege. In the division of the 19½c. rate the lines east of Buffalo received 9.3c. and of this the defendant on its division east of Rotterdam Junction received 4.03c. Defendant's local rate to Boston from Rotterdam Junction was 12c., the same as the rate through from Buffalo to Boston. The defendant,

in order to stop the milling-in-transit, refused to participate in the through rate from Chicago where that privilege was allowed and when grain had been milled-in-transit, added an arbitrary to its division of the through rate, making its share 10.03c., and that of the roads east of Buffalo 15.3c. 10.03c. was less than defendant's local rate from Rotterdam Junction, but the 15.3c. was greater than the published 12c. rate from Buffalo to Boston.

Held, (Prouty, C.), (a) that milling-in-transit was a special privilege, for which a railroad might properly demand extra compensation;

(b) that railroads were not obliged to form through lines unless they saw fit, and that defendant need not be a party to such an arrangement against its will, and might refuse to participate in a through rate with a milling-in-transit privilege attached thereto;

(c) that in the present case, however, since there was a local rate in force from Buffalo which did not include milling-in-transit, and since the milling was done at Buffalo or west thereof in every case, it was illegal for the defendant to demand more than 12c.;

(d) that damages should be awarded at 3.3c. on the shipments proved.

Order accordingly.

311.—St. Louis Business Men's League v. Atchison, T. & S. F. R. Co., et al. 9 I. C. C. Rep. 318. (Nov. 17, 1902.)

Complaint of higher rates from St. Louis to intermediate points than to Pacific Coast Terminals, of unreasonable rates on less-than-carload shipments compared to those on carloads, and of unreasonable rates from St. Louis compared to those from New York.

The low rates to Pacific Coast points were forced by water and market competition from New York, and rates to intermediate points were for the most part the through rate to coast plus the local back, until a point was reached where a lower combination could be had on an interior point. Rates to the Pacific from all points between New York and St. Louis were the same. Many articles went on commodity rates in carloads while in less-than-carloads they took class rates, making a difference of from \$1.00 to \$3.00 per 100 pounds.

Held, (Prouty, C.), (a) that the evidence was not sufficient to justify a finding of undue preference against intermediate points;

(b) that in view of the water and market competition involved, a graded rate from points between New York and St. Louis was not necessary;

(c) that a difference between carload and less-than-carload rates was proper and the distribution to the Pacific coast in carload lots was the more economic system, but this difference should not exceed 50% or 50c.

Order accordingly.

312.—Re Rates & Practice of the Mobile & O. R. Co. 9 I. C. C. Rep. 373. (Jan. 31, 1903.)

Voluntary investigation by Commission of above.

Defendant's regular grain rate from St. Louis, Mo., to Vicksburg, Miss., was 15c. per 100 pounds. A privilege was allowed, however, to grain shippers at St. Louis, to stop grain there for cleaning, sacking, etc., after which the grain went on to Vicksburg, paying the through rate from the point of origin only. Another privilege existed by which grain was consigned from Kansas points to Vicksburg with a stop-over privilege at St. Louis. At St. Louis the grain could be sold or stored and either the same or similar grain sent on at the balance of the through rate applicable to through shipments from the point of origin. These privileges did not appear in the published tariffs.

Held, (Fifer, C.), (a) that a published regulation allowing a stop-over privilege for cleaning, sacking or other legitimate purpose was proper;

(b) that the privilege of stopping grain to try the market at St. Louis or of reshipping other grain therefrom at less than the regular rate from St. Louis, was illegal.

313.—Re Proposed Advances in Freight Rates. 9 I. C. C. Rep. 382. (April 1, 1903.)

Investigation of causes for proposed advances in freight rates from the Mississippi River to the Atlantic Seaboard.

The rates filed in November, 1902, showed a general advance, the advance on grain being about 14% and that on iron and steel 10%. On packing house products the 25c. export rate was withdrawn and the 30c. domestic rate made applicable to all traffic. All rates were henceforth maintained without rebates, which had not been the case formerly. In 1898 the rates on iron had been low on account of commercial depression. Grain rates had been 17½c., or lower for a long period prior to the advance to 20c., and it appeared that the advance had been made possible by the stifling of competition. The railroads were very prosperous.

Held, (Prouty, C.), (a) that railroads were entitled to share in the general prosperity and to raise to a reasonable figure rates reduced during bad times below what was normal, but rates should not be based on the law of supply and demand;

(b) that the advance in the iron rate was proper on the above principle;

(c) that the withdrawal of an export rate lower than that allowed on domestic traffic, thus allowing the same rate on all, was not in itself improper, nor was the maintenance of rates without rebate;

(d) that the advances in rates on grain were unwarranted.

314-A.—Proctor & Gamble v. Cincinnati, H. & D. R. Co., et al. 9 I. C. C. Rep. 440. (April 10, 1903.)

Complaint of unreasonable rates and classification on soap in Official Classification Territory.

Complainant's annual output of soap was about 100,000,000 pounds, 65% being shipped in carload, and 35% in less-than-carload lots. Up to 1899 soap in carloads had been rated 5th and in less-than-carloads 4th class, but at net weights only (no charge being made for the box). The roads then began charging for gross weights. In *Beaver v. Pittsburg, Cincinnati & St. Louis R. Co.*, 4 I. C. C. Rep. 733 (131), the roads were ordered to charge sixth class carload rates, which amounted to fifth class at net weights. They complied with the order in 1891. In 1900 they raised carload soap to fifth class and less than carload to third, but later reduced less-than-carload to 20% under third class, which was somewhat higher than fourth class, and 10c. per 100 pounds, or 33½% higher than fifth class. Since the decision in *Beaver v. P. C. & St. L. R. Co.* practically all the sixth class articles, with which soap was there compared, had been raised to fifth class. Defendants had a rule allowing articles made from animals (cattle, hogs, etc.), to go in mixed carload lots at carload rates, thus giving an advantage to packing companies who made soap as a by-product. If soap were put back into fourth class in less-than-carloads this advantage would be removed. Defendants alleged that by reason of divisions of through rates to a road owned by complainants, the net rate paid by them was very low.

Held, (Knapp, Ch.), (a) that the continuance of rates reduced by the order of the Commission did not give rise to the same presumption as to reasonableness as where such rates were put in force at the road's own volition;

(b) that since the former decision *Proctor & Gamble v. Cincinnati, Hamilton & Dayton, et al.*, 4 I. C. C. Rep. 87, (1890), (109), circumstances had so changed as to justify fifth class rates on carload soap, but that in less-than-carloads it should take fourth class rates;

(c) that although if the sole question involved were the reasonableness of the soap rates to complainants, or the relation of the rates to him and to his competitors, divisions of rates to a road owned by complainants might be important, it was immaterial in a case where, as here, the question was as to the proper classification of soap for all shippers in this territory.

Order accordingly.

314-B.—*I. C. C. v. Cincinnati, H. & D. Ry. Co., et al.* 146 Fed. 559. C. C. S. D. Oh. W. D. (Nov. 22, 1905.)

Proceeding by the Commission to enforce compliance with its order in above.

Defendants introduced evidence as to the cost of handling less-than-carload soap, showing this to be much greater than in case of carload, but not showing that the relative cost in handling less-than-carload and carload had altered and not being sufficient to rebut the presumption that the original classification (fourth class) in L. C. L. was reasonable as shown by its continuance for 13 years, and by the finding of the Commission. It was contended by defendants that the

relation between fifth class and 20% below third class was the same as that between sixth class and fourth class, and that, therefore, the finding of the Commission that carload soap was properly fifth class established the propriety of the 20% below third class rate on less-than-carloads.

Held, (Thompson, D. J.), that the reasonableness of the less-than-carload rate was properly tested not only by the carload rate on soap, but by the L. C. L. rates on other commodities, and that as the defendants had not sustained the burden on them of rebutting the finding of the Commission the latter would be affirmed.

Decree entered in favor of the complainant, as prayed.

314-C.—*Cincinnati & H. D. R. Co. v. I. C. C.*, 206 U. S. 142; 27 Sup. Ct. 648; 51 L. Ed. 995. (May 13, 1907.)

Appeal from the decree of the Circuit Court for the Western District of Ohio, enforcing the order of the Commission in the above case.

The railroads contended, in addition to the positions taken in the Court below, that by reason of certain admissions contained in the statement of complaint, the Commission had been precluded from considering the whole subject and operation of the new classification in the entire Official Classification Territory.

Held, (White, J.), (a) that the Commission had the power to consider the whole subject in this proceeding;

(b) that as a matter of fact, in view of the different rates in the different parts of the Territory, and of the fact that where 20% below third class was less than fourth class, the rate was made fourth class, fifth class did not bear the same relation to 20% below third class as sixth class did to fourth;

(c) that the Act gave *prima facie* effect to the findings of the Commission, and where those findings were concurred in by the Circuit Court they would not be interfered with, unless the record established that clear and unmistakable error had been committed, which did not appear in the case at bar.

Judgment affirmed.

315.—*Ohio Coal Co. v. Whitcomb, et al.* 123 Fed. 359; 59 C. C. A. Rep. 487; C. C. A. 7th Circuit. (April 14, 1903.)

Error to C. C. W. D. Wis., directing verdict for defendant in action for damages for discrimination in exacting a \$2.00 switching charge for coal cars.

The defendants, receivers of the Wisconsin Central R. Co., had a piece of track along Lake Superior, owned and operated under a joint agreement with the Chicago, St. Paul, Minneapolis & Omaha Railroad, and connecting with a spur track to plaintiff's dock and with the dock of another coal company, and also with those of shippers of other commodities. Defendants exacted a \$2.00 charge from

plaintiff, but not from other shippers. Plaintiff had this paid under protest.

Held, (Grossepup, C. J.), (a) that defendant was responsible for the excess charge under the agreement to operate the track with the C., St. P., M. & O. R. Co.;

(b) that the exaction of the charge was an undue discrimination, giving rise to a right of action by plaintiff;

(c) that plaintiff was not prejudiced by having paid the charge since this was, as it were, done under duress;

(d) (semble) that an express contract by plaintiff to pay an excessive charge would not prejudice in an action to recover it back.

Judgment reversed and new trial ordered.

Jenkins, J., dissented on the ground that the greater distance of plaintiff's dock rendered a different charge proper from that charged the other coal company, and that as to shippers of other articles there was greater competition, justifying a lower charge.

316.—*United States v. Michigan Cent. R. Co., et al.* 122 Fed. 544.
C. C. N. D. Ill. N. D. (April 24, 1903.)

Demurrer to bill to restrain defendant from discrimination in grain rates.

Held, (Grossepup, C. J.), (a) that under its general chancery jurisdiction a court of equity had power to enjoin discrimination prohibited by the Act;

(b) that such suit might be by the Government, especially where a preliminary investigation had been made by the Commission;

(c) that the Elkins Act, giving jurisdiction in equity to suits by the Attorney General, extended not only to violations prior to its passage, but to every violation whether transpiring previously or subsequently.

Preliminary injunction granted.

317.—*Ulrick, et al. v. Lake Shore & M. S. R. Co., et al.* 9 I. C. C. Rep. 495. (May 14, 1903.)

Demand for reparation on account of unreasonable rates, preference, discrimination and violation of Sec. 4 in shipments of ice.

Defendant charged \$1 per ton on ice from Hillsdale, Mich., to Springfield, Ohio, and only 80c. to Columbus, Ohio. Defendant's line ran through Springfield, the short line distance to Columbus being 29 miles less than the distance to Springfield. There was railroad competition at Columbus. The rate was subsequently made equal at both points. Complainant had made shipments previous to the equalization of rates and claimed damages.

Held, (Fifer, C.), that the claim must be denied, in view of short line distance and of competition.

Complaint dismissed.

318-A.—Interstate Commerce Commission v. Philadelphia & R. R. Co., et al. 123 Fed. 969. C. C. S. D. N. Y. (June 12, 1903.)

Petition for order requiring witnesses before the Commission to produce certain documents and to answer certain questions.

The proceeding was begun by W. R. Hearst, who was not a shipper. Certain documents were required from the Lehigh Valley Coal Co., an independent company, the entire stock of which was owned by the Lehigh Valley Railroad Co.

Held, (Lacombe, C. J.), (a) that as the contracts and questions asked for related merely to the sale of coal, and not to the transportation thereof, the order would be refused;

(b) that contracts relating to alleged violations of the Sherman Act were immaterial in this proceeding;

(c) (semble) that the L. V. Coal Co. was so connected with the L. V. R. Co., as to be compellable to produce any contracts relating to transportation;

(d) (semble) that where no shipper raised any objection, a mere purchaser of merchandise might not properly prosecute a proceeding for the reduction of a rate.

Motion to require answers denied.

318-B.—Interstate Commerce Commission v. Baird. 194 U. S. 25. (April 24, 1904.)

Appeal from C. C. S. D. N. Y. dismissing petition for order requiring the production of certain contracts, etc., and requiring certain witnesses to answer certain questions.

The contracts which the Lehigh Valley Coal Co. was required to produce were with independent operators for the sale of coal in Pennsylvania, the price being fixed at 65% of the selling price of coal at tide water, 35% thus being left for freight and marketing expenses. The Temple Iron Co. was required to produce the agreements by which the roads took over the collieries of a proposed competing line and distributed them among themselves. Certain witnesses were asked questions respecting the price and sale of coal.

Held, (Day, J.), (a) that the proviso of Sec. 3 of the Act of February 19, 1903, eliminated an appeal to the Circuit Court of Appeals in a case like the present;

(b) that direct damage to the complainant was not essential to the prosecution of a complainant before the Commission;

(c) that a board like the Commission should not be too narrowly constrained by the technical rules of proof applicable to common law actions;

(d) that all the contracts and questions were relevant.

Order of C. C. reversed.

319-A.—Tift, et al. v. Southern Ry. Co., et al. 123 Fed. 789; (see also 370); C. C. S. D. Ga. W. D. (July 16, 1903.)

Bill for injunction to restrain defendants from putting in force an alleged unreasonable increase of 2c. per 100 pounds in their rate on lumber from Georgia points to points in Tennessee and Ohio and beyond.

The original bill had been filed April 14, 1903, praying for a temporary injunction. This was granted. On demurrer to it, after full hearing, the demurrer was overruled but the injunction was dissolved on May 16, 1903, pending on application to the Commission. On June 23, 1903, a petition was filed with the Commission, the increase having been put into effect on June 22. The complainants then filed this bill praying for an injunction.

Held, (Speer, D. J.), (a) that at common law the courts of equity had jurisdiction to enjoin the exaction of unreasonable rates and that this power was not taken away by the Act;

(b) that as the report of the Commission in the case pending before it would soon be filed, and as no irreparable injury appeared to complainants, the Court would withhold the exercise of its power to enjoin the rates until properly apprised of the action of the Commission.

319-B.—*Tift, et al. v. Southern R. Co., et al.* 138 Fed. 753; 148 Fed. 1021; C. C. W. D. Ga. S. D. (June 28, 1905.)

Bill for injunction to prevent defendants from putting in force or continuing an increase of 2c. per 100 pounds in the rate on lumber from southern territory to the Ohio River.

The increase had been made to secure additional revenue for meeting increased expenses. In spite of it, although the business at first fell off, it afterward revived, owing to the great and increasing prosperity of the lumber industry, the tonnage in which had constantly grown. The Commission had found that the increase was unreasonable. It had been made by concerted action of all the various roads.

Held, (Speer, D. J.), (a) that the findings of the Commission were *prima facie* correct and were not to be disparaged or discredited by the Courts, save for controlling reasons of law or fact;

(b) that increased tonnage in a commodity should result in lower rates;

(c) that railroads could not regulate their charges in accordance with what they believed the traffic would bear, nor graduate such charges in proportion to the prosperity of the industry whose products they transported;

(d) that it was highly significant that the advance in question was the result of the concerted action of the various roads;

(e) that such advance was unreasonable and its enforcement should cease forthwith.

Order issued accordingly, a master being appointed to take an account of overcharges paid while the rule was in force.

319-C.—Southern Ry. Co. v. Tift. 206 U. S. 428; 51 L. Ed. 1124; 27 S. Ct. Rep. 709; Appeal from C. C. A. 5th Circuit. (May 27, 1907.)

For decision on merits see *Illinois Central Railroad Co. v. Interstate Commerce Commission*. 206 U. S. 441, (369-B.)

Held, (McKenna, J.), (a) that in view of the fact that the parties had stipulated in Court that if the complainants prevailed restitution might be made, the decree referring the case to a master to ascertain the amounts of damage, would not be reversed;

(b) (semble) that the decision in the *Abilene Cotton Oil* case did not hold that the passage of the Act forbade a bill in equity to prevent the filing or enforcement of a schedule of unreasonable rates or a change to unjust or unreasonable rates.

See also 159 Fed. 555.

320-A.—U. S. ex rel^r Kingwood Coal Co. v. West Va., Nor. R. Co., et al. 125 Fed. 252. C. C. N. D. W. Va. (Oct. 15, 1903.)

Petition for mandamus to require defendants to allot to relator its proper quota of coal cars.

In the field where relator's mine was situated there were two others, the Atlantic Coal & Coke Co., and the Irona Coal Co. These were receiving 27% and 56% of the available cars, while relator received but 17%, claiming that it was entitled to 33 1-3%. Relator had 65 working places, the Irona Co., 103, and the Atlantic Co., 45. The rating was based on a capacity for daily output of 400 tons for relator, 600 for the Atlantic Co., and 1250 for the Irona Co. It appeared that all three had ample facilities for mining and loading more coal than there were cars for. The West Virginia Northern R. Co. had no cars of its own, and merely got what it could from the Baltimore & Ohio Railroad Co.

Held, (Goff, C. J.), (a) that in furnishing cars to coal mines it was the duty of a railroad, under Sec. 3 of the Act, to do so impartially, basing its distribution on a disinterested and intelligent examination by experts of the different mines in the region;

(b) that the capacity of a mine for rating purposes was the amount of coal it was able to load on cars in a given time, this being based on the number of its working places, the thickness of its coal seams, its equipment and arrangement, but that the number of working places was the principal consideration;

(c) that in the present case the rating was unfair and should have been based on the ratio of the numbers of working places, relator being entitled to 31% of available cars.

Leave to relator to amend writ to conform to above findings, after which amended writ issued.

320-B.—West Virginia Nor. R. Co. v. U. S. ex rel Kingwood Coal Co. 134 Fed. 198; 67 C. C. A. Rep. 220; C. C. A. 4th Circuit. (Nov. 15, 1904.)

Error to C. C. N. D. W. Va., issuing mandamus against the West Virginia Northern R. Co., the Irona Coal Co., the Atlantic Coal & Coke Co. and J. H. Weaver, commanding them to cease discriminating against relator and to furnish it with at least 31% of its available coal cars.

Weaver was president and director of the railroad and its principal stockholder. He was also the principal stockholder in the Irona Coal Co., and was himself the Atlantic Coal & Coke Co.

Held, (Fuller, Cir. Just.), (a) that the Court properly permitted an amendment of the writ to conform to the facts found, the case being one where mandamus was ordinary statutory process and not prerogative;

(b) that Weaver was properly included in the injunction;

(c) that the conclusion and action of the lower Court was proper. Judgment affirmed.

321.—Daish & Sons v. Cleveland, A. & C. R. Co., et al. 9 I. C. C. Rep. 513. (June 18, 1903.)

Complaint of discrimination against complainant in favor of other shippers by unreasonable delay in forwarding a carload of hay from Condit, Ohio, to Washington, D. C., and demand for reparation.

The delay was caused by an embargo which the defendant, the Baltimore & O. R. Co., placed on all traffic except live stock, perishable freight, and railroad supplies coming east from western connections, by reason of the anthracite coal strike, and the congestion of traffic resulting therefrom.

Held, (Yeomans, C.), (a) that defendants, during the period of congestion resulting from the strike, had the right to keep their line clear by embargoing certain traffic and had the right to except from the embargo perishable freight, live stock and railroad supplies;

(b) that they also had the right to restrict the embargo to freight from connecting lines;

(c) that no undue discrimination was shown.

Complaint dismissed.

322.—Mayor, etc., of Wichita v. Atchison, T. & S. Fe. R. Co., et al. 9 I. C. C. Rep. 534. (Oct. 24, 1903.)

Complaint of unreasonable export grain rates from Wichita, Kas., to Galveston, Texas, as compared with those from Kansas City, of preference of the latter, and of violation of Sec. 4.

The export grain rate from Wichita to Galveston was 30½c. per 100 pounds, having been raised in December, 1902, from 28½c. while that from Kansas City, a highly competitive point, was 17c. The rate from Wichita to Kansas City was 14½c., making that from Wichita via Kansas City 31½c. Grain from Kansas City which had already paid a local rate to Kansas City, was carried to Galveston on a proportional rate, good over any line, while at Wichita this

privilege was allowed only over the line by which the grain came in to Wichita.

Held, (Prouty, C.), (a) that the Kansas City rate was the result of competition, as was the privilege of reshipping at a proportional rate over any road, and that since the same conditions did not exist at Wichita, and the Kansas City rate was remunerative, there was no violation of Secs. 3 or 4;

(b) that the Wichita rate of 30½c. was, however, unreasonable, and should be reduced to 28½c.

Order accordingly.

323.—Mayor, etc., of Wichita v. Atchison, T. & S. F. R. Co. 9 I. C. C. Rep. 558. (Oct. 24, 1903.)

Complaint of unreasonable rates on coal from Missouri, Arkansas and Indian Territory points to Wichita, Kas., compared with those to Kansas City.

Such rates to Wichita were from 30% to 50% higher than those to Kansas City, but there were other coal fields near Kansas City, which made a low rate from distant fields necessary.

The Wichita rate was not *per se* unreasonable, and the Kansas City rate was remunerative.

Held, (Prouty, C.), that in view of the market competition at Kansas City, the Wichita rate was not unreasonable.

324.—Mayor, etc., of Wichita v. Chicago, R. I. & T. P. R. Co., et al. 9 I. C. C. Rep. 569. (Oct. 24, 1903.)

Complaint of unreasonable lumber rates from the south to Wichita, Kas., as compared to those to Kansas City, Omaha, Lincoln and Topeka, of preference of such points and of violation of Sec. 4.

The Wichita rate for 11 years had been 27½c. per 100 pounds. It had recently been raised to 30c. or 30½c., and on complaint reduced to 28½c. The rate to Kansas City and Omaha was 23c., to Lincoln 24c., and to Topeka 26c. Kansas City was about 30 miles, Topeka 40 to 60 miles and Omaha and Lincoln about 200 miles more distant than Wichita. Over certain lines, traffic passed through Wichita en route to these points. At Kansas City, Omaha and Lincoln, competitive conditions were substantially different from those at Wichita, but this was not true as to Topeka and Wichita.

Held, (Prouty, C.), (a) that although the Commission itself saw no valid reason why rates to Wichita should be higher than those to Kansas City, Lincoln and Omaha, yet in view of the Federal decisions the maintenance of a higher rate to Wichita than to such points did not constitute a violation of Secs. 3 or 4;

(b) that a higher rate to Wichita than to Topeka constituted a violation of both sections;

(c) that the 28½c. rate to Wichita was unreasonable and should not exceed 27½c.

Order accordingly.

325.—Marten v. Louisville & Nashville R. Co. 9 I. C. C. Rep. 581.
(Nov. 21, 1903.)

Complaint of unreasonable lumber rates to the north, from points between Nashville and Louisville, of preference of shippers from Nashville, and violation of Sec. 4.

Prior to 1885 lumber rates from Nashville and intermediate points to Louisville had been 10c. per 100 pounds. Rates from Nashville were then reduced to 9c. and in 1894 to 8c., leaving those from intermediate points the same. The rate from Louisville north to Detroit was the same irrespective of the origin of the traffic, so that Nashville have an advantage over the intermediate points of 2c. There was greater competition at Nashville.

Held, (Knapp, Ch.), (a) that the competition at Nashville rendered the circumstances and conditions there substantially dissimilar from those at intermediate points, thus justifying an exception to Sec. 4;

(b) that such dissimilarity justified a preference of the competitive point only to the extent of the actual effect of the competition;

(c) that the competition at Nashville justified a difference in rates of 1c., but that a difference of 2c. was unreasonable.

Order accordingly.

326.—Roth v. Texas & Pacific R. Co. 9 I. C. C. Rep. 602. (Nov. 28, 1903.)

Complaint of refusal to allow mixed carload rates on lemons and pineapples from New Orleans to Dallas, Texas, of an unreasonable rate resulting, and demand for reparation.

Defendant's tariff provided a mixed carload rate for lemons with bananas and for pineapples with almost every other green fruit except lemons and oranges. Complainant shipped a mixed carload of lemons and pineapples and was required to pay the less-than-carload rate, or \$60.82 more than the charge would have been if a mixed carload rate had been allowed (in which case the carload rate on the highest rated article in the mixed carload was received as the rate on the whole.) No reason appeared why a mixed carload rate should not be allowed on these articles, as well as on those as to which such a rate was in fact allowed. The above facts appeared from the papers submitted there having been no formal hearing.

Held, (Clements, C.), (a) that there being no dispute as to the facts, the case would be disposed of as on complaint answer and hearing, although no hearing had in fact been held;

(b) that the mixed carload rate should be allowed as asked for;

(c) that the \$60.82 should be refunded.

Order accordingly.

327.—Kindel, et al. v. Atchison, T. & S. F. R. Co. 9 I. C. C. Rep. 606. (Nov. 1, 1903.)

Complaint of unreasonable east and west rates to and from Denver.

After the order issued in *Kindel v. Atchison, T. & S. F. R. Co.*, 8 I. C. C. Rep. 608 (288), none of the defendants' west-bound rates to Denver from the east were higher than to the Pacific Coast, but on some 140 commodities the east-bound rates from the Pacific to Denver had remained higher than to points farther east. Subsequently this number was reduced to 41. As to some of these it appeared that market and water competition forced down the rates to the Missouri River. This was the case with sugar, which was excepted from the former order. As to others there appeared to be no sale or market at Denver; and as to still others there appeared to be no justification of the rate relation.

Held, (Prouty, C.), (a) that in accordance with the recent Federal decisions, market or commercial competition at the farther point justified an exception to Sec. 4, on the carrier's own initiative;

(b) that although certain of the rates were obviously unjust, since the defendants seem disposed to adjust them on their attention being called thereto, no order would be made for the present.

328.—Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co. 9 I. C. C. Rep. 620. (Dec. 2, 1903.)

Complaint of defendant's refusal to allow carload rates on buggies bought from different parties by one consignee, where the title thereto passed to the consignee on delivery to the carrier.

Under the rules in operation on defendant's line, carload rates on buggies were applicable only to shipments from one consignor to one consignee, where the consignor was the owner. Under these rules complainant could not get carload rates on different kinds of buggies purchased in different manufactories, by having them sent to one person, who forwarded them all to complainant. Title passed to complainant on delivery to the railroad company, but the latter maintained that in order to secure the benefit of the carload rate, the consignee must take possession before delivery to the railroad.

Held, (Prouty, C.), (a) that the rate given the consignor must be equally given to the consignee, and since consignee got title on delivery, the railroad must haul the goods for him at carload rates;

(b) that the consignee need not have an agent on hand to ship in his own name;

(c) (semble) that railroads in this country are not bound to recognize forwarding agents;

(d) (semble) that, under Sec. 2, the "like circumstances and conditions" did not include the ownership of the goods, but applied only to the facts of carriage.

Bell Co. v. Baltimore & O. & W. R. Co., and Norfolk & W. R. Co., 9 I. C. C. Rep. 632. Accord.

329.—Behrend v. Washington So. R. Co., et al. 9 I. C. C. Rep. 637. (Dec. 2, 1903.)

Complaint of unreasonable passenger rate from Washington, D. C., to Moseley, Va.

The through rate between the above points via Richmond was 50c. greater than the rate from Washington to Richmond plus that from Richmond to Moseley, but it appeared that it was necessary to transfer by bus between two stations in Richmond and the 50c. was the amount of the bus charge, which was not alleged to be unreasonable.

Held. (Yeomans, C.), that the complaint should be dismissed.

330.—MacLoon v. Boston & Maine R. Co., et al. 9 I. C. C. Rep. 642. (Dec. 2, 1903.)

Complaint of unreasonable passenger rate from Boston, Me., to Janesville, Wis., of discrimination in greater charge from Boston to Janesville than from Janesville to Boston, and demand for reparation.

The charge for the west-bound trip was \$23.73, while the east-bound rate was but \$21.73, the accommodation each way being substantially the same.

Held. (Yeomans, C.), that on the authority of *Duncan v. Atchison, Topeka & Santa Fe Railroad Co.*, 6 I. C. C. Rep. 85, (173), the west-bound rate was not necessarily the same as a rate east-bound.

Complaint dismissed.

331.—Derr Manufacturing Co. v. Pennsylvania R. Co., et al. 9 I. C. C. Rep. 646. (Dec. 18, 1903.)

Complaint of unreasonable classification of shoe brushes with iron handles.

The complainant manufactured three grades of shoe brush, the cheapest of which was only about half as valuable as the most expensive. He contended that as these brushes were heavier for their bulk and of less value than other brushes made from bristles, they should receive a third class rate, and not the first class rate applied to the better brushes.

Held. (Clements, C.), (a) that while there were exceptional instances requiring deviation from the general practice, yet to require a separation and grading into different classes with varying rates of the different grades of the same article, would greatly complicate the matter and would go far to defeat the very purpose of classification;

(b) that it was impracticable to apportion with mathematical exactness the burdens of transportation, the best that was obtainable in this case being reasonable and substantial approximation;

(c) that although the defendants might, if they saw fit, reduce the rate on certain grades of brushes, the facts here shown did not warrant the Commission in ordering them to do so.

Complaint dismissed.

332.—United States v. Chicago & N. W. R. Co. 127 Fed. 785; 62 C. C. A. 465; C. C. A. 7th Circuit. (Jan. 5, 1904.)

Error to D. C. N. D. Ill.

This was an amicable action to determine whether the United States was entitled to the party rates for bodies of soldiers, which were allowed athletic teams, theatre and concert troupes, etc. The latter usually furnished return transportation and much incidental traffic; also the Government did not pay in advance and the tickets were not limited in time.

Held, (Bunn, D. J.), (a) that as the Government was not in competition with any of the classes allowed party rates it was not discriminated against in the refusal of such rates;

(b) that the circumstances above mentioned rendered the circumstances and conditions dissimilar.

Judgment for defendant affirmed.

333.—Re Transportation of Salt from Hutchinson, Kas. 10 I. C. C. Rep. 1. (Jan. 19, 1904.)

Investigation on informal complaint of discrimination and preference of a certain Salt Co. by divisions of through rates to a railroad controlled by it.

After the organization of the Hutchinson & Arkansas R. Co., the control of it was acquired by the Hutchinson Salt Co., which sold it four thousand feet of switch track from the Hutchinson Salt Company's mill to the tracks of neighboring railroads. The railroads made an agreement to issue through rates to the Missouri River and give defendant, the Hutchinson & Arkansas R. Co., 25% of the rate, which was 50c. per ton on salt. Defendant undersold the other shippers at Kansas City.

Held, (Prouty, C.), (a) that the arrangement was a mere subterfuge to cover a discrimination, and was clearly unlawful;

(b) that this proceeding was merely one of inquiry, and no order to cease and desist could be made, it being believed that the railroad companies would voluntarily discontinue the arrangement, but the matter should be called to the attention of the District Attorney, and placed in the hands of the Department of Justice.

The question as to whether or not a division of a through rate with a bona fide industrial road, owned or controlled by a shipper, was illegal, was not passed on.

See also 406.

334.—Transportation of Immigrants from New York. 10 I. C. C. Rep. 13. (Jan. 27, 1904.)

Investigation to determine the legality of an alleged pooling agreement.

Prior to 1894, immigrants were at the mercy of scalpers. At that date, the railroads, by joint agreement, appointed agents, and arranged for the sale of tickets on a basis of the division of business among the trunk lines, with the stipulation that when the returns of any line showed a falling off of passenger business, this should be equalized by giving that line so many additional immigrants. The

question was raised as to the validity of this agreement, under Sec. 5 of the Act.

Held, (Clements, C.), (a) that since the Government officials and all parties agreed that this system was beneficial to all, and since if a pooling agreement, it worked only in favor of the immigrants, and there was no danger in allowing its continuance, no order would be made;

(b) that Sec. 5 provided against a "pooling of freights" and a "division of earnings" of all kinds, but not against a division of passengers.

335.—Pratt Lumber Co. v. Chicago, I. & L. R. Co. 10 I. C. C. Rep. 29. (Jan. 27, 1904.)

Complaint of unreasonable lumber rates from Sheridan, Ind., to Boston.

Sheridan was a non-competitive point 28 miles north of Indianapolis, a competitive point, and by defendant's line was the nearer point to Boston by that distance, but the short line to Boston from Indianapolis did not run through Sheridan. The lumber rate from Sheridan was 26½c. per 100 pounds, from Indianapolis 24½c. per 100 pounds.

Held, (Clements, C.), that under the Federal decisions the conditions at the two points were substantially dissimilar, and the relation of rates was therefore proper.

Complaint dismissed.

336.—Mayor, etc., of Wichita v. Missouri Pacific R. Co., et al. 10 I. C. C. Rep. 35. (Jan. 27, 1904.)

Complaint of 5c. differential in favor of wheat against flour to Texas points, and of preference of Texas millers thereby.

Since the decision in *Kauffman Co. v. Missouri Pacific*, 4 I. C. C. Rep. 417 (1890), (121), Texas mills had grown very largely. There was no such differential in any other direction. As a justification of the differential defendants relied on the fact that flour was more valuable, that the barrel was carried free, that grain contained much waste material and was itself the raw material, and more grain could be loaded in a car, etc.

Held, (Clements, C.), (a) that it was not the province of the Commission to equalize geographical or natural advantages;

(b) that the differential was warranted by the facts above stated, and the absence of such a differential in other parts of the country was really an exception to what should be the general rule;

(c) that conditions had not materially changed since the prior decisions had been rendered.

Complaint dismissed.

See also *Kansas Board, etc., v. Atchison, T. & S. F.*, 8 I. C. C. Rep. 304, (268.)

337.—Parks v. Cincinnati & M. V. R. Co. 10 I. C. C. Rep. 47.
(Jan. 30, 1904.)

Complaint of discrimination in supply of cars for grain, and in denying a special switch to complainant's coal yard, while allowing one to his competitors, and demand for reparation.

The reason that grain cars had been refused to complainant, though allowed to others, was that those to whom cars were given were shipping locally to points not covered by an embargo in force during the coal strike of 1902, while complainant had demanded cars to ship to embargoed points. As to the switch, it appeared that complainant's coal shipments were entirely within the State of Ohio.

Held, (Fifer, C.), (a) that as regards car distribution there was no discrimination proved;

(b) that the question of the refusal of a switch to complainant, while allowing one to a competitor, was here immaterial since complainant's business was entirely intrastate and the Commission had no jurisdiction.

Complaint dismissed.

338.—Re Tariffs on Export and Import Traffic. 10 I. C. C. Rep. 55. (Feb. 5, 1904.)

General investigation of above in view of the Elkins Act.

There were four methods of publication in general use: (1) that of adding the varying ocean rate to a fixed inland rate; (2) that of fixing the through rate via all ports by taking the lowest combination of ocean and inland rates via any port at the time; (3) that of fixing a new rate for each applicant such as seemed advisable to the traffic manager at the time of application; (4) that of having a fixed through rate, with either the ocean or inland rate varying. The first method was the one usually used.

Held, (Prouty, C.), (a) that these export rates were subject to the Act, at least as to traffic within the United States;

(b) that the second and third methods above named were illegal, but as the second method was the one mainly used in the southern cotton trade, which was not as strong as the northern railroad traffic, the Commission would defer action to give Congress an opportunity to amend the Act, the same being also true in regard to the trade to China, etc., across the Pacific.

339-A.—Interstate Commerce Commission v. Chesapeake & O. R. Co., and N. Y., N. H. & H. R. Co. 128 Fed. 59; C. C. W. D. Va. (Feb. 19, 1904.)

Bill for injunction to restrain defendant from carrying out a certain agreement by the Chesapeake & Ohio R. Co., deliver coal to the New York, New Haven & Hartford R. Co., at certain agreed rates less than the market price of the coal at the mines, plus the published rates over the C. & O. R. Co.'s line, plus the cost of transportation to the point of delivery beyond the line of the C. & O. R. Co., and also to restrain the C. & O. R. Co. from giving and the N. Y.,

N. H. & H. R. Co. from receiving any rebate, concession, discrimination or advantage in interstate commerce.

In 1896, there had been a period of industrial depression and, in order to keep the mines along its line going, the C. & O. R. Co. had entered into a contract with the N. Y., N. H. & H. R. R. Co. to deliver to it at New Haven 2,000,000 tons of coal as wanted, between July 1, 1897, and July 1, 1902, at \$2.75 per ton. At the time of executing the agreement, and ever since (except for certain brief periods) this amount had not been sufficient to pay the cost of the coal at the mines, and the expense of delivery, including the published freight rate, but had never been less than the published rate. On the average, after deducting cost and transportation items beyond the line of the C. & O. R. Co., there remained but 23c. or 28c. to meet the published rate of \$1.45 from the mines to Newport News over the C. & O. R. Co.'s line. The Court found that the contract was not made for the purpose of evading the Act. Under this contract of 1896, delivery was made of all but about 60,000 tons, when the C. & O. R. Co. was unable to make further delivery because of a strike. The N. Y., N. H. & H. R. Co. bought this amount of coal in the market at an advance of \$103,000, and claimed the latter sum from the C. & O. R. Co. In settlement of this claim the C. & O. R. Co. then made the agreement of 1903, against which these proceedings were directed, contracting to deliver 60,000 tons on the same terms as in the original contract.

Held, (McDowell, D. J.), (a) that nothing in the Act prohibited a carrier from being a dealer in coal;

(b) that as the price received was always greater than the published freight rate, and as the contract had been made in good faith and not as a mere device to evade the Act, there was no legal ground for assuming that the loss incurred by the C. & O. R. Co. was sustained by it as a carrier and not as a dealer;

(c) that the facts did not, therefore, disclose a rebate or other violation of Sec. 2 of the Act;

(d) that as the Act looked to the substance of things and not to mere bookkeeping, it was immaterial whether or not the only amount charged up to the freight account was the difference between cost plus outside transportation charges and the contract price, this being less than the tariff rate, and these facts did not disclose a violation of Sec. 6, or a transportation at less than published rates;

(e) that the facts disclosed, however, a violation of Sec. 3 in that the N. Y., N. H. & H. R. Co., under the contract of 1896, received a preference in securing coal at lower rates than other purchasers could have done so;

(f) that the \$103,000 item in the contract of 1903 was hence invalid and since without it this contract was subject to the same objections as that of 1896, the further performance of the agreement would be enjoined;

(g) that the omnibus injunction would be refused.

339-B.—New York, New Haven & Hartford R. Co. v. Interstate Commerce Commission; Interstate Commerce Commission v. Chesapeake & Ohio R. Co. 200 U. S. 361; 50 L. Ed. 515; 26 Sup. Ct. 272. (Feb. 19, 1906.)

Appeal from C. C. W. D. Va.

Held, (White, J.), (a) that the Act is a remedial one, therefore, "entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve;"

(b) that such purpose was to compel the carrier, as a public agent, to give equal treatment to all;

(c) that the prohibition of the statute was applicable to every method of dealing by a carrier by which the forbidden result could be brought about;

(d) that the bona fides of the parties in making the contracts in question, or the absence of an intent on their part to evade the provisions of the Act, was immaterial, if the means adopted were calculated to bring about the forbidden result;

(e) that facts disclosed a violation of the provisions of both Section 2 and of Section 6;

(f) that it was immaterial that the result of applying the prohibitions of the Act, as here interpreted, would render it difficult or impossible for a carrier to deal in the commodities produced along its line;

(g) that a construction placed by the Commission of the Act, adhered to by it for a number of years and impliedly sanctioned by Congress by re-enacting the Act without change, was binding on the Supreme Court unless plainly erroneous;

(h) that the decisions by the Commission in the *Haddock* (120) and *Coxe* (124) cases were distinguishable, in that in those cases the charters of the carriers in question had authorized them, prior to the passage of the Act, to deal in articles produced along their lines, but these authorities were binding only on the precise facts there presented;

(i) that an injunction should not be issued prohibiting in general terms any violation of the Act;

(j) that the injunction would be modified so as to perpetually enjoin the C. & O. R. Co. from accepting less than its tariff rates by means of dealings in the purchase and sale of coal.

Modified decree affirmed.

341.—Chattanooga Chamber of Commerce v. Southern Ry. Co., et al. 10 I. C. C. Rep. 111. (March 12, 1904.)

Complaint of preference of Nashville over Chattanooga in rates from the West.

In *Chattanooga Board of Trade v. East River, Virginia & Georgia R. Co.*, (162-A), the Commission had held that a higher rate to Chattanooga for a distance less by 151 miles than to Nashville was illegal under Sec. 4, but the Supreme Court had refused to enforce the order

and had sent the case back to the Commission to consider further the circumstances and conditions in view of the later rule, including railroad and market or industrial competition as a consideration in determining the justice of a preference or discrimination. Chattanooga was in the Southern Classification Territory, and Nashville in the Official, rates in the latter being much lower. Nashville also was near the Trunk Line Territory and was affected by the low Trunk Line rates. The present excess of the Chattanooga rates over those to Nashville was 25-60%, but in no case did this excess amount to the local rate from Nashville to Chattanooga. Both points were on the Tennessee River, but rates to neither were affected to any extent by water competition. There was stronger railroad competition at Nashville, and Chattanooga had grown and prospered under the rates then in force, which had been the same for 18 years. An alteration of these rates would have necessitated a change in rates in the whole southern territory.

Held, (Knapp, Ch.), that in view of the extensive and radical changes which an alteration of the Chattanooga rates would necessitate, and in view of the difference of circumstances and conditions, the present Chattanooga rates could not be said to be unreasonable, though the Commission would not hold them to be reasonable.

Complaint dismissed without prejudice.

Clements, C., dissented on the ground that the conditions at the two points were not so dissimilar as to justify so great a difference in rates, this difference being the result of concerted action on the part of the various roads.

342.—*Transportation of Salt, et al.* 10 I. C. C. Rep. 148. (March 12, 1904.)

Investigation, on informal complaint, of alleged discrimination and preference of a certain salt company by divisions of through rates to a boat line controlled by it.

The through rate on salt from Manistee and Ludington, Michigan, to the Missouri River was 53c. per barrel. The route was by boat on Lake Michigan to Chicago and by the railroads from Chicago. From 30% to 33½% of the rates, amounting to from 16c. to 18c., was given to the boat line company, which was owned and controlled by the same persons who controlled the International Salt Company. Previously, other boat lines were accustomed to carry salt for 8c. per barrel, but additional services, such as stowage, unloading, cooperage, etc., were rendered by the present boat line, representing a total cost of about 8½c. per barrel. Certain Detroit salt companies complained that the International Salt Company was underbidding them at the Missouri River, and that the division of the rate to the boat line amounted to a rebate, thus enabling the latter to undersell them. It appeared that Manistee and Ludington were 250 miles nearer Chicago than Detroit, also that at Detroit, coal must be used, while at Manistee and Ludington, free saw dust was

used at a saving of 75c. per ton. Detroit got better rates to the east and to other points. The boat line was, on paper, an independent company, and had paid no dividends.

Held, (Fifer, C.), (a) that it was not the duty of the Commission to equalize natural advantages between localities through the adjustment of tariff rates;

(b) that under the circumstances the division of rates to the boat line was a reasonable one;

(c) that the boat line, being the initial carrier on the Lakes, had it in its power to compel a division of the rate favorable to itself, because it could carry either to Chicago or to Milwaukee, and the Chicago lines were, therefore, obliged to compete for its business, and a division forced from the railroads by reason of such consideration, was not unlawful, unless so grossly excessive as to amount to a rebate.

Proceedings dismissed.

343.—Kentucky Railroad Commission v. Louisville and N. R. Co.
10 I. C. C. Rep. 173. (March 17, 1904.)

Complaint of defendant's refusal to deliver to a connecting carrier cars of live stock destined to stock yards at Louisville.

The Bourbon Stock Yards were established at Louisville, Ky., in 1859, on the line of the Louisville & Nashville, and could be reached only by that road. In 1888 the L. & N. entered into an agreement with the Bourbon Company, by which the L. & N. agreed to deliver there all live stock coming over its road to Louisville, the Stock Yards Company agreeing to unload and to charge reasonable rates, etc. In 1901 the Central Stock Yards were established on the line of the Southern Railway, outside of Louisville, and the L. & N. refused to deliver live stock cars to the Southern at the junction point, although still continuing to deliver cars loaded with other freight. It was as convenient and safe for the L. & N. to deliver live stock cars to the Southern for the Central Yards as to deliver them to the Bourbon Yards, but by throwing the business to the latter, the L. & N. secured reloads of beef and other products of animals. The facilities of the Central Yards were somewhat better than those of the Bourbon Company, and the public would benefit by the competition of the Central Yards. The Kentucky Constitution required a railroad to deliver freight to a connecting carrier, and as to interstate live stock shipments this had been enforced in the State Courts.

Held, (Prouty, C.), (a) that the making of an exclusive contract like that in this case was not a violation of the Act;

(b) that the Commission had no power to compel a railroad to deliver carloads of interstate freight to a connecting carrier;

(c) that it was not a discrimination or preference, forbidden by the Act, to refuse to deliver live stock to the Southern Railway while delivering dead freight;

(d) that the Commission had no power or authority to enforce, as to interstate traffic, the provisions of the Constitution of Kentucky.

Complaint dismissed.

344.—Central Yellow Pine Ass'n. v. Vicksburg, S. & P. R. Co., et al. 10 I. C. C. Rep. 193. (March 19, 1904.)

Complaint of preference and discrimination to certain lumber shippers by means of division of rates to tap lines owned by such shippers. (See also 369.)

Complainants were lumber shippers east of the Mississippi River. West of that river there were many small railroads which tapped the forests, progressing inland as the lumber was cut. They started at first as private roads, hauling lumber only, and later grew into regular chartered roads doing the ordinary business of a common carrier and receiving a division of through rates from connecting lines. As the total rate on lumber was a blanket rate from all points both east and west of the river, and as the western shippers owned the tap line, this gave them a decided advantage over the eastern ones. The same railroads did not serve the east and west sides of the river. It appeared also, that many railroads gave a "milling-in-transit" privilege by which logs might be sawed at the point of junction with the tap line and then sent on at the balance of the through rate.

Held, (Prouty, C.), (a) that there was here no discrimination or preference, as the eastern shippers were served by different railroads from the western ones;

(b) that the violation of the Act, if any, consisted in transporting lumber, by means of a "device," at less than the published rate, prohibited by Sec. 6 and by the Elkins Act;

(c) that the railroads were not justified in charging a shipper a lower rate because he was forced to bring his goods in from a distance by private means of transportation, since concessions from a reasonable and published rate could not be made in order to equalize industrial or geographical disadvantages;

(d) that a reasonable division of a through rate to a bona fide railroad subject to the Act, was proper and legal, and it was immaterial who owned such railroad;

(e) that although the Commission was formerly opposed to the "milling-in-transit" system, it now regarded it as proper, if not abused;

(f) that divisions of through rates to the small "tap-line" railroads, and "milling-in-transit" privileges, where allowed, should in all cases appear in the published tariff.

Order accordingly.

345.—Cist v. Michigan Central Ry. 10 I. C. C. Rep. 217. (April 1, 1904.)

Complaint of discrimination in charging a higher passenger rate for passage because no ticket had been purchased.

Defendant's line ran from Niagara-on-the-Lake, Canada, to Buffalo, 35.3 miles. The regular rate was \$1.10, but if a ticket was purchased it was but 85c. Complainant got on at Queen street, a station in Niagara-on-the-Lake, where there was no ticket office, and was charged \$1.10.

Held, (Prouty, C.), (a) that where a railroad made a reduction from a reasonable rate, it might require a ticket or charge the full rate;

(b) that even if it were a preference to have no ticket office at Queen street, the Commission had no jurisdiction as this point was not within the United States.

Complaint dismissed.

346.—*Hewins v. New York, N. H. & H. R. Co.* 10 I. C. C. Rep. 221. (April 11, 1904.)

Complaint of unreasonable parlor car rates on certain trains, to points en route from New York to Boston.

The parlor car rate between New York and Boston, either way, was \$1.00. On all trains but three the rate to intermediate points from New York was 50c. or 75c., but on these three trains the rate was \$1.00 to all points. This rule was made for the purpose of reserving places on such special trains for through passengers. The rate from the intermediate points to New York was in every case 50c. or 75c. There were enough other parlor car trains on which the 50c. or 75c. rate was allowed to intermediate points, to make the service by such trains adequate.

Held, (Knapp, Ch.), (a) that the Act did not require that a railroad charge the same rate in each direction;

(b) that the \$1.00 charge to intermediate points on the three trains was not unreasonable.

Complaint dismissed.

347.—*Glade Coal Co. v. Baltimore & Ohio R. Co.* 10 I. C. C. Rep. 226. (April 28, 1904.)

Complaint of discrimination in cars for coal during 1903, and of unreasonable and discriminating regulations.

Between January 8th and March 26th, 1903, during the car famine produced by the coal strike, defendant refused to allow loading from wagons at the siding at Meyersdale and Keystone Junction, Pa. Complainant owned mines at Glade City, between a mile and two miles from these points, and desired to load from wagons at such points. During the same period defendants allowed wagon loading at Sand Patch and other points 3 to 13 miles distant, where the conditions were no different from those at Meyersdale and Keystone Junction. Defendant also made a charge of 50c. more per ton on coal loaded from wagons than that loaded from a tippie. Defendant

alleged that the public was better served at such a time by concentrating business with a few large shippers, that sidings were full with other freight, and loading from wagons would interfere with other traffic. The real object of the 50c. per ton rule was to discourage small shippers. The loading from tipples was quicker, and did not fill up sidings, and coal so loaded usually went in train loads; but complainant always loaded his cars within a day. Complainant proved \$96.50 loss through the alleged discrimination.

Held, (Knapp, Ch.), (a) that there was no difference in conditions at Sand Patch and at Meyersdale and Keystone Junction, and that to allow loading from wagons at one point and not the other was an unreasonable discrimination;

(b) that the 50c. rule was unreasonable as a clear discrimination against small shippers, since it did not depend on whether the loading was fast or slow;

(c) (semble) that a rule prohibiting loading except from tipples might be reasonable.

Order accordingly, reparation to amount of \$96.50 awarded.

348.—Georgia Peach Growers' Ass'n. v. Atlantic C. L. R. Co., et al.
10 I. C. C. Rep. 255. (June 4, 1904.)

Complaint of unreasonable rates and regulations on peaches from Georgia to New York.

This rate from Atlanta was 81c. per 100 pounds in earloads, or \$162 per car of 20,000 pounds. 12,000 pounds of free ice were carried per car, special heavy cars were required, the trade was uncertain, the freight valuable and easily spoiled, and required to be at the market at a certain time. To this \$162 per car rate to New York there was added an \$80 arbitrary to Boston. Complaint was also made that the minimum earload allowed was but 20,000 or 22,500 pounds, which necessitated loading five tiers high. It was alleged that four tiers were all that could be taken safely, but the evidence did not clearly support this allegation. The 81c. rate to New York was based on a \$500 per car valuation and increased or decreased with the value.

Held, (Fifer, C.), (a) that the rule increasing the charge according to valuation was unreasonable, since the value did not greatly vary in any case, and since the railroad should always pay the actual damage suffered in case of injury to goods;

(b) that the \$80 arbitrary on Boston shipments was unreasonable, and that \$50 was ample;

(c) that the minimum earload requirement and the 81c. rate to New York were both reasonable.

Order accordingly.

349.—Swaffield v. Atlantic Coast Line and L. & N. R. Co. 10 I. C. C. Rep. 281. (June 24, 1904.)

Complaint of unreasonable rate and classification of cow-peas into New Orleans.

Complainant was a grain broker at New Orleans and bought cow-peas at various southern points, shipping them in earloads to New Orleans. Cow-peas may be planted as a fertilizer. 120 pounds of peas will make twenty pounds of vines, which absorb nitrogen and fertilize in one year, while clover used the same way takes two years. The cow-peas are also valuable as fodder for cattle and the peas are eaten by negroes. They are four times as valuable as manure. One defendant railroad company classified cow-peas in Class D of its freight classification, which included grain; while the other defendant company imposed a charge of 1c. per 100 pounds more than Class D rates on cow-peas shipped from South and North Carolina points to New Orleans.

Held, (Fifer, C.), (a) that cow-peas need not be rated as fertilizer;

(b) that it was unreasonable, however, to charge more than straight Class D rates, and the extra cent charged by the Atlantic Coast Line should be taken off.

Order accordingly.

350.—Aberdeen Group Commercial Ass'n. v. Mobile & O. R. Co.
10 I. C. C. Rep. 289. (June 25, 1904.)

Complaint of unreasonable rates from St. Louis to Mississippi points, to Aberdeen, Miss., and nearby points and of violation of Sec. 4 by lower rates to Mobile, Ala., and Meridian, Miss., more distant points on the same line.

At the two latter points there was strong railroad competition, which was not true of the points in the Aberdeen Group. The rates on grain, however, (22c. per 100 pounds), were at 1¼c. per ton mile for an average haul of 400 miles, which was much higher than the average grain rate either of defendant or of other roads.

Held, (Yeomans, C.), (a) that the difference in circumstances and conditions warranted a higher rate for the shorter distance;

(b) that the Commission would not find that rates in general to the Aberdeen Group were either reasonable or unreasonable;

(c) that the grain rate of 22c. was, nevertheless, unreasonable by 5c. and should be reduced.

Order accordingly.

351-A.—Re Allowances to Elevators. 10 I. C. C. Rep. 309. (June 25, 1904.)

Investigation, on informal complaint, of discrimination in favor of certain grain shippers operating elevators, by allowances for elevator service.

In 1899 the traffic on the Union Pacific was increasing faster than its car supply; moreover, the consignments of grain at country stations did not fill a large car, and it was necessary to have a grain elevator to put grain in foreign cars for long hauls and to fill large cars. The railroad company made a contract with Peavy & Co., and

with two corporations controlled by them to build elevators at Council Bluffs and Kansas City, and handle the grain, the Union Pacific to pay 1¼c. per 100 pounds. Peavy & Co. was itself a large shipper, handling 60% of the Union Pacific grain, and owning many country elevators. No shipper ever complained of the agreement, but other railroads alleged a preference to Peavy & Co., and that, if the contract were continued in force they would be obliged to make like contracts. It appeared that the 1¼c. was reasonable for the service, that Peavy & Co. lost money on the transfer business, but more than made good the loss on the incidental benefits obtained in their grain business. Though the Union Pacific Railroad Company could, under the contract, require them to transfer for other shippers, they never did so, as there were enough foreign and other cars to handle such freight.

Held, (Knapp, Ch.), (a) that the contract was bona fide and not a "device" to give an illegal preference;

(b) that the rate was reasonable since it would cost the railroad company as much to do the work, and it might hire anyone else to do such work for it;

(c) that it made no difference that the party so hired was a shipper;

(d) that the railroad company was not bound to help competing railroads, and if it thus compelled them to take like measures, the result was for the public advantage;

(e) (semble) that arrangements whereby railroads allowed any of their public duties to be performed by shippers were not favorably regarded by the Commission, even though technically legal, since they usually excited distrust and gave opportunity and temptation for discrimination.

Complaint dismissed.

351-B.—Re Allowance to Elevators. 12 I. C. C. Rep. 85. (April 6, 1907.)

Further investigation of same matters dealt with in 351-A.

It now appeared that the 1¼c. allowed the Peavy Elevators more than paid the actual cost of elevation. Almost all the grain elevated was that of Peavy & Co. The railroads offered the same compensation to other elevators but there were scarcely any such.

Held, (Harlan, C.), (a) that elevation signifies the unloading of grain from cars, or from a grain carrying vessel into a grain elevator and reloading it out again after storage for a period not to exceed ten days;

(b) that retention after that period, or treatment of the grain, were not properly elevation;

(c) that elevation was a facility which carriers might furnish to shippers as part of transportation;

(d) that it must be furnished to all on equal terms;

(e) that a carrier might either furnish elevation itself or hire some agent for the purpose;

(f) that where an agent so hired was also a shipper the situation usually gave rise to distrust on the part of other shippers, and was not to be encouraged, and would be narrowly scrutinized by the Commission;

(g) that allowance to the shipper for services, more than equal to the actual cost of such services, amounted to a rebate, and was illegal;

(h) that in the present case the arrangement was legal, but the rate should be reduced to $\frac{3}{4}$ c. per 100 pounds.

Order accordingly.

Clements, C., dissented, holding that the arrangement gave Peavy & Co. an undue advantage, and was illegal.

Lane, C., dissented, and stated the facts to be that Peavy & Co. billed grain beyond Omaha on purely local shipments in order to secure the rebate, holding that the whole arrangement was a mere device to favor them, no real transportation service being performed by them.

Cockrell, C., did not sit.

Re-hearing allowed. 13 I. C. C. Rep. 498. (April, 1908.)

On June 29, 1908, the Commission, after further consideration of the facts in this case, modified its order directing the defendants to cease from paying any allowance at all to Peavy & Co., on grain belonging to them, or in which they had a direct ownership or interest, or which was mixed, treated, weighed or inspected at their elevators at Council Bluffs. Commissioner Harlan, in delivering the opinion, stated that the many incidental benefits accruing to Peavy & Co. by reason of the contract with defendants made it unfair to other shippers that they should receive any cash allowance on grain coming through their elevators.

352.—New Orleans Live Stock Ex. v. Texas & Pac. R. Co. 10 I. C. C. Rep. 327. (June 25, 1904.)

Complaint of unreasonable rates on cattle from Texas points to New Orleans.

The rate in question was $42\frac{1}{2}$ c. per 100 pounds, with \$15 per car added when in lots of less than 10 cars. This rate had been raised from 34c. within 5 years, and the $42\frac{1}{2}$ c. rate was higher than any in force for 17 years. If this haul had been entirely within the State of Texas, under the rulings of the Texas Commission but 25c. per 100 pounds could have been charged. There were no shipments of more than 10 cars. The expenses of transportation had recently increased.

Held, (Prouty, C.), (a) that the rate in question was excessive to the extent of \$15 per car, the increase in the rate from 34c. to $42\frac{1}{2}$ c. more than covering the increased cost of operation;

(b) (semble) that in traffic of this character, and under the pecu-

liar circumstances of this case, defendant might refuse to receive cattle in single carload lots.

Order accordingly.

Question as to the propriety of a less charge on shipments of 10 carloads not decided.

353.—Barrow v. Yazoo & M. V. R. Co., et al. 10 I. C. C. Rep. 333.
(June 25, 1904.)

Complaint of unreasonable rate on horses and mules from Bayou Sara, La., to St. Louis, Mo.

The less-than-carload rate, applied to shipments of horses and mules, was the double first class rate of \$1.80 per 100 pounds, upon an estimated weight of two thousand pounds for the first animal, fifteen hundred pounds for the second, and one thousand for each additional animal. On four horses this made a \$99 rate, while at the carload rates then in force a whole carload of twenty-five animals went for \$100. The charge for one animal was \$36. One or four animals must have half a car, and usually must have a whole car.

Held, (Prouty, C.), (a) that the charge of \$36 for one animal was reasonable, but \$99 for four animals was excessive, and that a fairer method would be to charge 90c. per 100 pounds, and estimate the first animal at four thousand, second at fifteen hundred, and each additional at one thousand pounds;

(b) that, as the case stood, the Commission could not make an order, since under the Federal decisions it could only direct carriers to cease and resist from imposing rates now in effect, and had no power to prescribe the rate which should be put into effect, but if shippers were charged more than the rates indicated, they might apply to the Commission for reparation.

354.—Denison Light & Power Co. v. Missouri, K. & T. R. Co. 10 I. C. C. Rep. 337. (June 25, 1904.)

Complaint of unreasonable coal rates from McAlester, I. T., to Denison, Tex., and demand for reparation.

Complainant got its coal from McAlester, I. T. In 1891 the rate per ton was \$1.20. Early in November, 1899, it was raised to \$1.55 and later in that month to \$1.80 on both lump and slack; in February, 1903, it was made \$1.90 on lump, and \$1.50 on slack. The distance was 97 miles. The last rate yielded 2c. per mile, while defendant's average on coal was 6 mills, and its average on other freight 9½ mills. The intrastate rate prescribed by the Texas Commission would be 90c. for 97 miles, and that by the Missouri and Iowa laws \$1. The rate was practically a non-competitive one. Although railroad expenses had recently increased the railroads had come to an understanding by which competitive rates could be raised.

Held, (Prouty, C.), (a) that the rate in question was unreasonable and that \$1.25 would be a reasonable rate;

(b) that the evidence as to reparation was not clear enough on which to base an order, and that the case would be held open for further evidence;

(c) that no order would issue, since under the Federal decisions the Commission had no power to fix rates.

355.—**Gardner & Clark v. Southern Ry. Co.** 10 I. C. C. Rep. 342. (June 25, 1904.)

Complaint of preference of Lynchburg merchants over those at Danville, Va., in rates on bananas from Charleston, S. C., and demand for reparation.

At the time of the hearing the carload banana rate from Charleston to Danville was 43c. per 100 pounds, and that to Lynchburg 35½c. Between May 1, 1902, and April 25, 1903, the Danville rate had been 33c., and that to Lynchburg 20c., the latter being the result of mistaken belief on the defendant's part that so low a rate was necessary to meet the rate by other lines from Baltimore. Defendant then believed this rate to have been 20c., but it was in fact 33c. During this period complainant's damages were \$130, calculating his overcharge at 13c. per 100 pounds. Defendant alleged a set-off as follows: On complainant's request he had been allowed (defendant having given him permission, for one car and its agent having continued the permission, without authority for 17 cars more) to unload half a car at Danville and send the rest of the car to Lynchburg, (Danville being on the way to Lynchburg by defendant's road), on payment of the carload rate from Charleston to Lynchburg plus the rate on half a carload from Lynchburg to Danville. He thus received a rate lower than the tariff by the difference between the carload rate to Lynchburg and to Danville.

Held, (Prouty, C.), (a) that the 43c. rate to Danville was not unreasonable, and the 35½c. rate to Lynchburg was properly lower by reason of competition there;

(b) that between May 1, 1902, and April 25, 1903, competition did not properly force the Lynchburg rate below 33c., and since Lynchburg was thus given an illegal preference of 13c., complainant was entitled to that amount on shipments proved;

(c) that complainant could not recover, in addition, for the loss of business occasioned by the discrimination, since the loss thus occasioned could not be accurately proved;

(d) that defendant, being a party to the illegal practice alleged by it, could not use it as a basis for set-off.

Reparation ordered to the amount of \$130.

356.—**Blackman v. Southern Ry. Co., et al.** 10 I. C. C. Rep. 352. (June 29, 1904.)

Complaint of unreasonable storage charges at defendant's terminal and of non-publication of the same by one defendant, and demand for reparation.

Complainant shipped certain barrels of molasses from New Orleans to Macon, Ga., consignee refused to take the molasses, and it remained in the station, where storage was charged according to the rate fixed by the Southeastern Car Association, composed of the defendant and other connecting railroads. Plaintiff complained that the rate was excessive, and should not properly be greater than that charged by regular warehouses, and asked damages. It appeared that the rates were made higher than ordinary warehouse rates in order to keep the railroad stations clear, and not for profit. One of the lines in the Association did not publish its storage rates.

Held, (Fifer, C.), (a) that railroads were not in the warehouse business and might charge a higher rate than ordinary warehouses, and that the rates in question were reasonable.

(b) that railroads must publish their warehouse charges.

Order accordingly as to publication, otherwise complaint dismissed.

357-A.—Re Transportation and Refrigeration of Fruit. 10 I. C. C. Rep. 360. (Oct. 11, 1904.)

Investigation, on informal complaints, of rates on fruit, alleged to be unreasonable by reason of refrigeration charges.

The Michigan Central R. Co. and the Pere Marquette R. Co., did not have nearly enough refrigerator cars for the growing trade from Michigan, and could not get a regular supply from other railroads. In 1902, these companies made an exclusive contract with Armour, the only person who had sufficient refrigerator cars, paying three-quarters of a cent a mile, Armour superintending the loading and icing and charging for the refrigeration. Before this time, refrigeration had at first been free, and more recently a charge had been made only for the ice. Now, under the new arrangement, the charge was more than double the cost of the ice, and the rate was increased by the amount of the icing charge, but the service was now much better. It appeared that some shippers preferred the present high rate to the old bad service, but that others did not.

Held, (Fifer, C.), (a) that a railroad company was bound, as a common carrier, to furnish refrigerator cars and ice for fruits;

(b) that this obligation, however, did not arise under the Act, and the remedy for failure to comply therewith was not before the Commission, but in the Courts;

(c) that a railroad might make an exclusive contract with a refrigerator car company for the use of its cars;

(d) that the icing rate was unreasonable in this case, and 2½c. per 100 pounds was a reasonable charge for the service;

(e) that by making the exclusive contract, the railroad was exacting an exorbitant charge, and even if the railroad did not have to provide ice, it was charging an unreasonable rate, since it required

the shipper to provide it and gave the exclusive right to one who charged an unreasonable amount;

(f) that refrigeration charges must be published;

(g) that no specific order would be made until the end of the present season, in the belief that the charges complained of would be readjusted by the defendants.

357-B.—Re Transportation and Refrigeration of Fruit. 11 I. C. C. Rep. 129. (June 22, 1905.)

Supplemental opinion in foregoing case.

After the previous case, in which it was decided that defendant's charges for refrigeration were unreasonable, the Michigan Central R. Co. reduced its charges to \$2.50 per ton. The Pere Marquette & Michigan Central R. Co., which had the Armour contract, was about to make a reduction in its 1905 charges of from 15 to 30%, and in 1906 expected to have its own cars, and charge only \$2.50 per ton for ice.

Held, (Prouty, C.), (a) that railroads were obliged to perform reasonably whatever service was essential to what they held themselves out as ready to do;

(b) that icing and refrigeration were essential to the transportation of fruit, and the railroad must make reasonable charges therefor, icing not being a mere incident to transportation, but a part of the service, and the railroads furnishing not merely ice, but refrigeration;

(c) that it was immaterial whether the railroad bought or leased the cars, since the cars were the railroad's in either case; (see page 137, cases cited.)

(d) that especially was this the case where the railroad would not allow the shipper to furnish ice;

(e) that a railroad might charge for the ice by the ton, or for the service of refrigeration by the car, or so much for ice per 100 pounds plus the refrigeration; but in any one of these cases, the charge must be reasonable and the Commission might control it, though it could not prescribe the method of charge;

(f) that the Michigan Central Railroad Co.'s charge was proper and the Pere Marquette Railroad Company's charge would ultimately be proper, and the Commission would, therefore, make no order, but award damages, if found necessary on the injured parties taking further steps.

358.—Cincinnati Chamber of Commerce v. Baltimore & O. R. Co., et al. 10 I. C. C. Rep. 378. (Oct. 4, 1904.)

Complaint of preference of rival cities, in allowing at them a later closing hour for out-bound package freight than that allowed at Cincinnati.

Until May, 1902, such closing hour at Cincinnati had been 5 P. M., (1 P. M. Saturday). On that date it was altered to 4.30, (12-30 Sat-

urday), though at competing cities the hour was 5 and 5.30. Defendants claimed that with the hour at 5.00 they were not able to clear their platforms.

Held, (Knapp, Ch.), (a) that the Commission had power to order a railroad to desist from any practice whatever by which it subjected a locality to an unreasonable disadvantage and this power extended to a case like the present;

(b) that in the present case defendants did not appear to be at fault and no order would issue for the present.

Complaint dismissed without prejudice.

359.—Re Divisions of Joint Rates to Terminal Railroads. 10 I. C. C. Rep. 385. (1904.)

Complaint of preference to shippers owning terminal railroads by unreasonably large divisions of through rates to such railroads.

The International Harvester Co. and the U. S. Steel Co. each owned a short railroad. The former originally exacted a switching charge of \$3 per car, and a reasonable charge by the latter would average \$3.50 a car. The railroads had lately allowed a division of the through rate to the Harvester Co.'s railroad of 20% of the rate to the Missouri River, averaging \$12 per car, and the Steel Co.'s Railroad was allowed 10% of the rate to the seaboard, 15% of that to Pittsburg, and 20% of that to the Missouri River, the rate being from Chicago in each case. Other shippers held stock in the Harvester Co.'s railroad, but it owned by far the larger part. Defendants contended that they were forced to give an initial railroad at least 20% of the total rate by reason of the competition of the other roads connecting with it for the traffic.

Held, (Prouty, C.), (a) that the latter argument might apply if the road in question were an ordinary carrier, but that where such road was practically owned by a shipper this argument, if sound, would justify any rebate, and that it was not applicable to the present case;

(b) that the Act did not prohibit a shipper from owning all or part of a railroad company, but did prohibit rebates by any device whatsoever, or the giving of any advantage to one shipper which was denied to others;

(c) that the present case was one in which a rebate was given by the railroads through an illegal "device;"

(d) that the excess over a reasonable division to the Harvester Co. railroad was \$9 per car, and that although there was a large excess to the U. S. Steel Co.'s road, the evidence was not clear as to its extent;

(e) that no order would be issued, as there could be no stronger prohibition than the language of the Act itself, but unless the evil was at once remedied the Commission would take action.

361.—Davies v. Pere Marquette, et al. 10 I. C. C. Rep. 405. (Jan. 7, 1904.)

Demand for reparation, modified by amendment to informal complaint, calling the attention of the Commission to certain alleged violations of the Act and requesting criminal prosecutions.

The violations alleged were overcharges which appeared to be due either to lack of knowledge on the part of agents of the contents of packages of freight, or were extra charges made by agents without defendant's knowledge or authority.

Held, (Yeomans, C.), that no wilful or intentional violation of the Act had been shown and no action would be taken by the Commission.

362.—Wrigley v. Cleveland, C. C. & St. L. Ry. Co. 10 I. C. C. Rep. 412. (Jan. 7, 1905.)

Complaint of unreasonable minimum charge on small freight packages.

Prior to February 16, 1903, the Southern Classification Rule as to small packages was that the minimum charge should be for fifty pounds in the class to which the package belonged, unless it was higher than first class, when the minimum charge should be for fifty pounds at first class rate, subject to a minimum charge of 25 cents. On the above date the rule was altered so that thereafter the minimum charge was based on 100 pounds, instead of 50 pounds. It appeared that the clerical work, billing, tracing lost articles, etc., was just as great with small as with large freight, and that cars could not be loaded nearly so full with small packages as with large freight. The Official Classification's minimum charge on all first class freight was based on 100 pounds.

Held, (Yeomans, C.), that in view of changed times, denser traffic and of the Official Classification Rule, the change from the 50 pound rule, though the latter had been long in force, could not be held unreasonable in this case, although the change in the rule was not approved in its general application over all roads.

Complaint dismissed.

363.—Paxton Tie Co. v. Detroit S. R. Co. 10 I. C. C. Rep. 422. (Jan. 7, 1905.)

Complaint of discrimination in cars for ties, of failure to publish rates, and demand for reparation.

Complainant was engaged in the business of buying railroad ties at Bainbridge, Ohio, for shipment to other States. It was to defendant's interest to keep ties from going off its own line, so as to keep down the price. By reason of complainant's entering the market the price of ties had increased 5c. During the car famine, produced by the coal strike in 1902, defendant refused to furnish any cars for ties except company ties, alleging scarcity of cars. Cars suitable for ties were furnished, however, to others for shipment of other commodities, and there was not really such a scarcity of cars as to warrant the denial of all cars to complainant. He demanded damages.

for profits lost through discrimination. It appeared that defendant did not publish rates in detail but posted a notice referring the shipper to the agent.

Held, (Fifer, C.), (a) that the facts showed an undue discrimination against complainant;

(b) that to refer shippers to an agent for rates was not a compliance with Sec. 6, but that no order by the Commission was necessary with regard thereto;

(c) that he should be awarded \$630, being the amount of profits he would have made on ties which he would have bought and sold at a profit, but for the discrimination, and which were consequently bought by his competitors.

Order accordingly.

364-A.—Chicago Live Stock Exchange v. Chicago, G. W. R. Co., et al. 10 I. C. C. Rep. 428. (Jan. 7, 1905.)

Complaint of preference of western packers over those at Chicago, by a higher rate to Chicago on live hogs than on products thereof.

In compliance with the orders of the Commission in *Chicago Board of Trade v. Chicago & Alton Railroad Co.*, 4 I. C. C. Rep. 158, (112), and *Squire v. Michigan Central R. Co.*, *id.* 611, (126) the rate on both live hogs and on products had been made the same and so continued up to August, 1902, when the Chicago Great Western contracted with certain Missouri River packers to haul their products to Chicago for 20c., leaving the live hog rate still at 23½c. The other roads followed suit. They alleged as a justification the facts presented in the two previous cases, and also competition among packers, but a number of railroad men admitted that the hog and cattle rates should be less than those on the respective products.

Held, (Fifer, C.), (a) that the Live Stock Exchange was a proper complainant;

(b) that conditions had not materially altered since the previous decisions;

(c) that the rates on hogs and their products should be the same. Order accordingly.

Knapp, Ch., doubtful, but concurred.

364-B.—Interstate Commerce Commission v. Chicago, G. W. R. Co., et al. (2 cases). 141 Fed. 1003; C. C. M. D. III. E. D. (Nov. 20, 1905.)

Proceedings by Commission under Secs. 10 and 3 of the Act to enforce the order issued in above, and under the Elkins Act to require defendants to cease from the discriminations alleged in favor of Missouri River packers, by lower rates on products than on live cattle and hogs.

The Court found the following to be facts:

The rates were *per se* reasonable and the cost of carrying live stock was greater than that of carrying dressed meats and packing house

products. The value of the service to the shipper was greater in case of products, they being twice as valuable, but in case of live stock the risk was greater. The rates on the products in question were the result of competition, the competition for products being considerably greater than for live stock. After an injunction issued in 1902 rates on both had been the same, but the Chicago Great Western having a longer line from the Missouri River to Chicago, in order to get its share of the traffic contracted with the Missouri River packing houses to haul their products for 7 years to the Indiana line for 18½c. per 100 pounds, and to Chicago for 20c., on freight going east from Chicago (a 5c. reduction.) The other roads had then followed suit. The Atchison, Topeka & Santa Fe road, not here a party, had been a competitive factor and the competition had not been originated by the Chicago Great Western. This competition was genuine and did not result from agreement of the defendants. The present rates on products were remunerative and those on live stock had not materially affected the Chicago markets' prices or shipments, or diverted business to the Missouri River packers, and the welfare of the general public, including shippers, consumers and all localities and markets, was not materially affected by the present rates.

Held, (Bethea, D. J.), (a) that since the rates in question were reasonable there was no violation of Sec. 1;

(b) that Sec. 3 of the Elkins Act provided a remedy for discrimination without prior proceedings before the Commission;

(c) that the object of the Act was not to prevent competition among railroads, but rather to encourage it (objects stated p. 1014);

(d) that in fixing rates the following circumstances should be considered:

- (1) Value of service to shipper,
- (2) Cost of service to carrier,
- (3) Weight, bulk and convenience of transportation,
- (4) Amount of shipment, (wholesale principle),
- (5) General public good,
- (6) Competition;

(e) that the fact that the competition was originated by one of the defendants was immaterial, even if such were the case here;

(f) that the mere possibility of competition arising as to live stock was unimportant, in view of the actual controlling competition as to products;

(g) that the fact that the greater part of the product was in the hands of a few, while such was not the case with live stock, was important as creating stronger competition with reference to products;

(h) that the *prima facie* case shown by the Commission's findings had been overcome.

Petitions dismissed with costs.

364-C.—Interstate Commerce Commission v. Chicago G. W. R. Co.
209 U. S. 108; 52 L. Ed. 268; 28 S. Ct. 493. Appeal from
C. C. N. D. Ill. (March 23, 1908.)

Held, (Brewer, J.), (a) that there was no presumption of wrong arising from a change of rate by a carrier;

(b) that in view of the findings of fact that the rates were all *per se* reasonable, that packing house products were more expensive to transport, the present rates had not injured the Chicago packers, and if the rates on products were the result of competition, there was no violation of the Act.

Judgment affirmed.

365.—Mershon, etc., & Co. v. Central R. of N. J. & P. R. R. Co. 10 I. C. C. Rep. 456. (Jan. 13, 1905.)

Complaint of unreasonable discrimination in favor of Buffalo shippers against those from Saginaw, Mich., in lumber rates over the New York & Long Branch road, controlled by defendants.

The lumber rate from Saginaw to New York was 21c. per 100 pounds, and from Buffalo 15c. To points on the New York and Long Branch road the latter added 5c. to the rate to New York on shipments from Saginaw, but only 2c. on shipments from Buffalo. No reason appeared for this discrimination, on all other commodities the rate over the N. Y. & L. B. being the same without regard to the origin of the freight.

Held, (Prouty, C.), that there was here an unlawful discrimination which should be corrected either by raising one rate or lowering the other.

Order accordingly.

366.—Lehmann, Higginson & Co. v. Atchison, T. & S. F. R. Co., et al. 10 I. C. C. Rep. 460. (Jan. 17, 1905.)

Complaint of unreasonable sugar rates from New Orleans to Wichita, Kas., compared to those to Kansas City.

Kansas City was more distant than Wichita from New Orleans by practically all direct routes, but goods destined to Kansas City did not usually pass through Wichita. There was strong competition at Kansas City and some at Wichita. The differential against Wichita had been 5c. until shortly before the filing of the complaint, when rates to Wichita were raised from 32c. to 47c., and those from Kansas City from 27c. to 32c., making the differential 15c., this being the amount of the local rate from Kansas City to Wichita.

Held, (Prouty, C.), (a) that the 47c. rate to Wichita was unreasonable *per se*;

(b) that to charge a rate to Wichita greater by the full local rate from Kansas City, a more distant point, than that charged to Kansas City was an undue preference of the latter;

(c) that although under the Federal decisions, a higher rate to Wichita was proper, the differential should not exceed 8c.
Order accordingly.

367.—Re Coal Rates by Atchison, Topeka & Santa Fe R. Co. 10
I. C. C. Rep. 473. (Feb. 1, 1905.)

Complaint of discrimination and preference in favor of competing coal shippers, by rebates in favor of them, and of departure from published rates.

Defendant's published tariff gave a coal rate from mines in Colorado and New Mexico to points in New Mexico. After 1900, defendant, as to the Colorado Fuel & Iron Company, allowed this rate to include the price of the coal, which the railroad company collected from the consumer and paid to this favored coal company, while as to all other coal companies it charged the full rate, without including the cost of the coal. The Colorado Company also received rebates.

Held, (Prouty, C.), (a) that the Act applied to commerce within a territory or between a State and a Territory;

(b) that this was a direct violation of the original Act by the railroad;

(c) that it was also a violation of the Elkins Act, both by the railroad and by the Colorado Fuel Company;

(d) that it was also a violation of an injunction granted by United States Circuit Court, on March 25, 1902, requiring defendant to adhere to its published rates.

368.—Duluth Shingle Co. v. Duluth S. S. & A. Ry. Co., et al. 10
I. C. C. Rep. 489. (Feb. 2, 1905.)

Complaint of unreasonable charge and of preference of complainant's competitors, in rates on shingles between Chicago and Duluth.

For many years the Duluth-Chicago rates on shingles had been 10c. per 100 pounds, the same as that on lumber and its products similar to shingles. On all roads but defendants' this rate still continued, but on January 15, 1903, the defendants raised the shingle rate to 13c., leaving that on lathes, sawdust, spools, paving blocks, etc., at 10c.

Held, (Yeomans, C.), that there was no reason for the change, that the present rate was unreasonable and produced an unjust discrimination which should cease forthwith.

Order accordingly.

369-A.—Central Yellow Pine Ass'n. v. Illinois C. R. Co., et al. 10
I. C. C. Rep. 50. (Feb. 7, 1905.)

Complaint of unreasonable lumber rates from the south to Ohio and vicinity, and of preference of certain shippers by rebates. (See also 344.)

Complainants were lumber shippers east of the Mississippi River, shipping into Central Freight Association territory. Prior to Sep-

tember, 1899, the blanket rate on lumber from the whole region both east and west of the river was 13c. per 100 pounds. It was then increased to 14c., and in April, 1903, again to 16c., by the concerted action of all the roads east and west of the river. Many statistics were shown by all the parties as to the cost of production and as to the cost of the service of transportation. The lumber business appeared to be extensive and to be increasing in volume and steady through the year, lumber not being perishable and not requiring fast running; it was usually loaded and unloaded by the consignor or consignee, entailed little risk to the railroads, required no special equipment and was generally desirable. Under the 13c. and 14c. rate both shippers and carriers had prospered, increased operating expenses to the railroads being offset by increased gross returns. West of the river the railroads allowed divisions to tap-line roads (both private roads and regular chartered roads controlled by shippers, see 344); but the roads east of the river refused to allow such divisions.

Held, (Clements, C.), (a) that the long maintenance of the 13c. and 14c. rates prior to 1903 threw on the railroads the burden of justifying the advance, which burden they had failed to sustain;

(b) that the test of the reasonableness of a rate was not the prosperity of the shipper under it, but was whether it yielded reasonable compensation to the railroad for the service rendered, and that prosperous times did not necessarily justify an increase of rates;

(c) that in estimating a railroad's operating expenses, cost of permanent improvements should not be included;

(d) that railroads were not justified in advancing a reasonable rate merely because additional revenue was needed;

(e) that a rate advanced by concerted action of roads which would normally compete, was *prima facie* more objectionable than one advanced under the competition which the Act favored;

(f) that a division to a private tap-line was a rebate and illegal;

(g) that although divisions to western tap-lines which were bona fide common carriers, did not render defendant's refusal to accord the same privilege to eastern ones a discrimination, yet it showed the unreasonableness of the total rate;

(h) that the conditions surrounding the lumber traffic, especially the great tonnage shipped, entitled lumber to a very low rate;

(i) to the extent of 2c. the present 16c. rate was unreasonable.

Order accordingly.

Knapp, Ch., and Fifer, C., dissented.

See also *Hayden & Westcott Lumber Co. v. Gulf S. I. R. Co., et al.* 14 I. C. C. Rep. 537, 539, 540, Nov. 10, 1908, where reparation was awarded on account of exaction of the 26c. rate.

369-B.—Illinois Central R. Co., et al. v. Interstate Commerce Commission. 206 U. S. 441; 51 L. Ed. 1128; 27 S. Ct. Rep. 700. (May 27, 1907.)

Appeal from C. C. E. D. La.

This was an appeal from the decree of the Court enforcing the order of the Commission in the above case, no opinion having been filed by the Circuit Court. At the agreement counsel for appellants stated to the Court that it need not examine the record, alleging that the error complained of was that the Commission did not give proper attention to certain principles of transportation law. The Supreme Court in discussing these, found them to be mixed questions of law and fact.

Held, (McKenna, J.), (a) that where the Commission evidently disregarded or overlooked relevant facts through an erroneous construction on its part of the meaning of the Act, its findings would be reviewed by the Supreme Court, but where, as here, the question was as to the proper weight to be given to certain parts of the testimony, this was a matter of fact, on which the findings of the Commission, affirmed by the Circuit Court, were binding;

(b) that in determining the reasonableness of a rate as shown by the returns to the carrier, expenditures for additions to construction or equipment were not properly chargeable against any one year, but should be projected proportionately over future years as well;

(c) that it was competent for the Commission and the Courts to pass on the reasonableness of a through rate or an advance therein, no matter how such rate was divided among the line parties to it.

Decree affirmed.

370.—*Tift, et al. v. Southern Ry. Co.* 10 I. C. C. Rep. 548. (Feb. 7, 1905.)

Complaint of unreasonable rates on lumber from the south to Ohio and vicinity and of preference of certain shippers by rebates.

The facts were practically the same as in *Central Yellow Pine Association v. Ill. Cent. et al.* (369-A.) But complaint was made by a part of the Georgia Saw Mill Association, which defendant claimed, violated the Anti-trust Act.

Held, (Clements, C.), (a) that this was a public inquiry, and the principle that one must come into equity with clean hands did not apply, as the Commission would here proceed with the inquiry, irrespective of the legality of complainant's status or prior conduct;

(b) that the 16c. rate was unreasonable, a 14c. rate being high enough. *Central Y. P. Association v. Ill. Cent., et al. supra*, followed.

Order accordingly.

See also 319.

371.—*Consolidated Forwarding Co. v. Southern Pac. Co., et al.* 10 I. C. C. Rep. 590. (Feb. 11, 1905.)

Complaint of unreasonable rates and refrigeration charges on oranges and lemons from Southern California to Missouri River points and to Chicago. See also 302-A.

In the previous case, 302-A, the above points had been reserved.

The rate in question on oranges was \$1.25 and on lemons \$1.00, the same as that to the Atlantic Coast. Considerable evidence was presented as to the cost of production, etc. There was a 26,000 pounds minimum carload rule in force, but recently most of the cars used had been large enough to hold this amount easily. There was a virtual pooling agreement among the defendants as regards this traffic (see 302-C.) The railroads never made the schedule time and this resulted in a difference of at least 15c. in the value of the service.

Held, (Clements, C.), (a) that where, as here, icing was absolutely essential to the service and where, by reason of exclusive contracts with refrigerator car companies, shippers were not permitted to supply their own refrigeration, the Act gave the Commission power to regulate such charges;

(b) that the refrigeration charges in question were not unreasonable;

(c) that the minimum carload rate, in view of the large cars now used, was reasonable;

(d) that with the present service, the \$1.25 rate was 15c. too high, and, if schedule time were made, \$1.15 would be a reasonable rate;

(e) that the lemon rate was reasonable;

(f) that defendants were unlawfully engaged in a pooling arrangement with reference to this traffic.

Ordered that defendants desist from enforcing the charges found to be excessive.

Prouty, C., concurring, held that the present rate was unreasonable only because trains did not run on schedule time.

Knapp, Ch., dissented on the ground that the present rate was reasonable, since it had originally been fixed very low in order to encourage this industry, and was now reasonable in spite of the increased traffic and slow service.

372—Richmond Elevator Co. v. Pere Marquette. 10 I. C. C. Rep. 629. (Feb. 18, 1905.)

Complaint of discrimination in cars for hay during the winter of 1902-3 from Michigan points.

During the period complained of, complainant had ready for shipment many carloads of hay, but could get no cars. It did not appear, however, that his competitors got any, nor did it appear what portion of the cars were required by him for shipment to certain embargoed territory. The testimony was on the whole vague and meagre. Defendant had a rule by which the first available car was allotted to the first shipper ordering cars, the second to the second, and so on, irrespective of the loads which each had ready for shipment. The practical working of this rule did not appear.

Held, (Knapp, Ch.), (a) that the Act did not require a road to

furnish adequate cars to shippers, but simply required that such as were available should be allotted without unjust discrimination;

(b) that the burden was on a complainant to prove the fact of discrimination, on proof of which it shifted to defendant to show that it was justified;

(c) that the mere proof of the above railroad rule without evidence of its practical working did not establish unfair discrimination;

(d) that the testimony was too meagre on which to base an award of damages, and the case would be held open for further action of complainant;

(e) (semble) that to withhold evidence of damages from the Commission reserving such for the Federal Court was improper practice.

373.—Thompson v. Penna. R. Co. 10 I. C. C. Rep. 640. (March 10, 1905.)

Complaint of discrimination in cars for coal against a shipper from wagons in favor of those shipping from tipples.

Complainant was a druggist in Western Pennsylvania. He bought the surface coal from the mines, one to three miles off the railroad, hired farm wagons, built a platform by a siding, and asked for cars. He got one or two cars, after which a rule went into effect on the railroad, prohibiting the giving of cars for wagon shipments, or to mines not having track connections with its road. It took a day to load a car from wagons, and from two to fifteen minutes to load a car from a tipple. In the latter case, the car went to the main line by gravity. It was shown that the public would get 50% more coal at such a time under the tipple rule, and that it would take the whole car supply to serve all wagon shippers.

Held, (Clements, C.), (a) that it was immaterial that the complainant was a druggist and not a regular coal dealer;

(b) that a wagon must be given cars, at ordinary times, as well as a tipple; and, if one wagon got cars, all wagons must have them;

(c) that the railroad's rule was justified in this case, however, by the emergency and the interests of the public, the decision being confined to the particular situation here disclosed.

Complaint dismissed.

374.—Cannon Falls F. E. Co. v. Chicago G. W. R. Co., et al. 10 I. C. C. Rep. 650. (March 25, 1905.)

Complaint of unreasonable grain rates from Cannon Falls, Minn., to Chicago, and preference of Minneapolis over Cannon Falls.

Cannon Falls was 45 miles southeast of Minneapolis. Defendants allowed reshipments from Minneapolis, which had come from the west, to proceed at the balance of the through rate to Chicago, on the production of expense bills. Under this rule, grain from Cannon Falls could go to Chicago 2c. cheaper through Minneapolis than direct. The combination of the rate from Cannon Falls to Chicago on Minne-

apolis was half a cent less than the straight rate from Cannon Falls to Chicago. The rate on rye and barley from Cannon Falls was in some cases higher than that on wheat.

Held, (Knapp, Ch.), (a) that a combination of local rates less than a through rate was clearly illegal;

(b) that the manipulation of billing at Minneapolis was objectionable;

(c) that the fact that grain at Minneapolis had already come from a distance did not entitle it to a lower rate than that given to grain originating nearby;

(d) that the rate on rye and barley should be less than that on wheat;

(e) (semble) that the rate from Cannon Falls need not be less than the combination rate on Minneapolis.

375.—Re Division of Joint Rates, etc., to Terminal Railroads. 10

I. C. C. Rep. 661. (March 25, 1905.)

Complaint of preference of certain St. Louis shippers by division of through rates to companies owned by them.

The railroads running east and west from St. Louis and East St. Louis usually made the same charge to and from both points on shipments to and from the west, but on those from the east the rate to St. Louis was higher by 5c. to 10c. on shipments in less-than-carloads. On westward shipments freight was taken from East St. Louis to the central station at St. Louis via the line of a Terminal Association whose charge the railroad absorbed. The service of the Terminal Association being very bad, two shippers organized express companies to transport freight from East St. Louis to the central station at St. Louis, and the railroads gave them 5c. per 100 pounds on such freight, but refused to make this allowance to other shippers hauling their own goods to the St. Louis station. These companies were not parties to any published joint tariffs. The St. Louis Syrup & Preserving Co. had organized and owned all the stock in a railroad which operated several thousand feet of track in its private grounds and connected with several roads. It was not party to any joint tariffs, but received large allowances from several roads. It appeared that probably the Illinois Glass Co. owned the Illinois Terminal Railroad Co., which also transported goods for the railroads from East St. Louis to St. Louis, receiving large divisions of through rates, while it transported the goods of the Glass Co. around its own yards for practically nothing. There was evidence, however, that it was the officers of the Glass Co. who owned this railroad and not the company itself.

Held, (Prouty, C.), (a) that the 5c. per 100 pounds to the Express Companies was both a departure from the tariff rate, a rebate, and an unjust discrimination, and was consequently illegal;

(b) that the payments to the road owned by the St. Louis Syrup, etc., Co., were rebates and also in violation of the Elkins Act;

(c) that if the Glass Co. owned the terminal railroad the case was one of a rebate, like that in *Re Division of Joint Rates, etc.*, (359.)

(d) that if the officers of the Glass Co. owned the railroad the transaction was not perhaps illegal, but that the evidence on the last two points was not clear.

Order accordingly.

376.—*Knapp v. Lake Shore & M. S. R. Co.* 197 U. S. 536; 49 L. Ed. 870; 25 S. Ct. Rep. 700. (April 10, 1905.)

Appeal from C. C. N. D. Oh. dismissing a petition for mandamus against defendant, requiring it to make a report with regard to certain matters as directed by the Commission under Sec. 20 of the Act.

Held, (McKenna, J.), (a) that the Circuit Courts had no jurisdiction to issue mandamus in original proceedings where not expressly given by the Act, and such power was not to be inferred from the grant of authority to the Commission to enforce the Act, or to the Attorney General to institute necessary proceedings for the enforcement of its provisions;

(b) *semble* that Sec. 16 was adequate to enable the Commission to enforce any order which it was authorized to make.

Judgment affirmed.

Harlan, J., dissented.

377.—*Koch v. Pennsylvania R. R. Co., et al.* 10 I. C. C. Rep. 675. (April 11, 1905.)

Complaint of undue preference in defendants' refusal to allow complainant the privilege of milling-in-transit at Harrisburg, while allowing it at other points.

Complainant was building a flour mill at Harrisburg, Pa., but was deterred by defendant's refusal to promise to allow him to mill-in-transit at 1½c. above the through rate, a privilege allowed to millers on the Pan Handle Division of the Penna. Co.'s lines west of Pittsburgh and to millers in Pennsylvania shipping to New York, Philadelphia and Baltimore for export.

Held, (Knapp, Ch.), (a) that the privilege of milling-in-transit was not a right, but if allowed to one shipper must be accorded to all similarly situated;

(b) that since it did not appear clearly here whether or not the circumstances and conditions governing the shipments of the preferred millers differed from those surrounding complainant, no order would be made, but the case would be held open, since no order requiring such radical changes in rates as that prayed for would be made on evidence as slight as that presented.

378.—*Pitts & Son v. St. Louis & S. F. R. Co., and T. & P. Ry. Co.* 10 I. C. C. Rep. 684. (April 24, 1905.)

Complaint of unreasonable rate on corn from Grove, I. T., to Marshall, Tex., and demand for reparation.

Complainant, during 1903, had made two shipments of corn "in the shuck" between the above points, on one of which he was charged 44½c. per 100 pounds, and on the other 31½c. He contended that the rate should have been 35½c. in each case. The only published rates were one by the St. Louis & San Francisco from Grove to Paris, Tex., of 21c. on shelled corn, and 21c. plus 25% on corn in shuck, and a proportional interstate rate of 14½c. by the Texas & Pacific R. Co. from Paris to Marshall, with a statement that the T. & P. would protect combination rates by the other routes. The intrastate rate fixed by the Texas Commission from Paris to Marshall was 12½c. The tariffs filed purporting to give the rates between these points were very complicated and confusing, with many notes, exceptions and signs, so that it took the Auditor of the Commission two days to determine the published rates in this case. Other roads made no difference in charge between shelled and unshelled corn, and none was made by the St. L. & S. F. until December, 1902.

Held, (Prouty, C.), (a) that, without deciding whether defendants could rightly charge more for unshelled than for shelled corn, and without passing on the reasonableness of a 35½c. rate between Grove and Marshall, a rate higher than 35½c. was clearly unreasonable (this being 21c. to the St. L. & S. F., and 14½c. to the T. & P., the latter being assumed to be reasonable as not complained of);

(b) that the excess charge should be refunded;

(c) that a confused and complicated tariff like that filed was not a compliance with Sec. 6;

(d) that a notation on one tariff referring to that of another carrier was not a compliance with Sec. 6;

(e) that where a total through rate was made up of two independent interstate rates, the Commission might inquire into the reasonableness of these rates by themselves.

Order accordingly.

379.—*Pitts & Son v. Atchison, T. & S. F. R. Co., et al.* 10 I. C. C. Rep. 691. (April 24, 1905.)

Complaint of unreasonable rates on hay shipments from Colorado and Kansas to Texas points, and demand for reparation.

The overcharges complained of had resulted from confused tariffs and were obviously in excess of what appeared to be reasonable. Although the shipments were through shipments, there were no published through rates, and the lowest rates published between the points in question were combinations of two interstate rates.

Held, (Prouty, C.), that the overcharges should be refunded, that against each of the two roads collecting the excess charges being specified in the order.

380.—*Hope Cotton, Oil Co. v. Texas & Pacific R. Co.* 10 I. C. C. Rep. 696. (April 24, 1905.)

Demand for reparation by reason of unreasonable charge for transporting oil from Shreveport, La., to Hope, Ark.

Complainant had asked defendant's agent as to the rate between the above points via Texarkana, Ark., and been informed that it was 12½c. per 100 pounds to Texarkana, and 5c. additional from there to Hope. These were the local tariff rates, but the through rate was 67c. The agent had authority only to quote tariff rates. After complainant had bought oil and shipped it, relying on the 17½c. rate, and after 17 cars had gone through, defendant refused to send on the remainder except at the 67c. rate. Complainant then attempted to ship it at the local rate to Texarkana, but defendant refused to take it.

Held, (Prouty, C.), that without passing on the right of a railroad to make a low local rate, conditional on local consumption, since the tariff in this case was not so worded, and since there was a published local rate to Texarkana at 12½c., defendant had no right to refuse shipments at that rate, no matter what was the probable intention of the shipper as to reshipments;

(b) that complainant should recover as damages the difference between the value of the shipments tendered at his mill plus the total local rates published, and price at Hope, Ark.;

(c) that complainant was not entitled to recover expenses incurred in endeavoring to have these goods shipped at the proper rate.

Order accordingly.

A suit to enforce this order was dismissed by the Circuit Court. See 20th Ann. Rep. 46.

381.—*Gallogly & Frestine v. Cincinnati, H. & D. Ry. Co.* 11 I. C. C. Rep. 1. (April 24, 1905.)

Complaint of car discrimination in grain shipments and demand for reparation.

Complainants, hay and grain shippers at Leipsic, Ohio, desired cars for grain during the winter of 1903-1904 to ship to Wheeling, W. Va., and to Ohio points, but defendant gave them none for grain, though offering them cars for hay, and though giving cars for grain to complainant's competitors. It appeared that the grain market was flooded and the defendant wished to protect the large grain dealers. Complainant had begun suit in the Ohio Courts on account of the discrimination, which suit was still pending.

Held, (Fifer, C.), (a) that the pending suit in a State Court was no bar to this proceeding;

(b) that although the evidence was conflicting, there appeared to be a discrimination against complainant;

(c) that from the evidence it was impossible to separate the damages suffered from lack of cars for interstate and intrastate shipments, and the case would, therefore, be left open for a month to give complainant the opportunity to supplement his evidence on this point;

(d) (semble) that a suit pending in a Federal Court under Sec.

9 of the Act was a bar to proceedings before the Commission with regard to the same transaction.

382.—Re Differential Freight Rates. 11 I. C. C. Rep. 13. (April 27, 1905.)

Investigation of differentials on exports from Boston, New York, Philadelphia and Baltimore.

Philadelphia's differential at the time of the investigation was 2c. per 100 pounds, and Baltimore's 3c. over New York and Boston on all commodities except grain and steel and iron, as to which it was half that amount. Boston and New York were on a par as to exports, but as to freight for domestic use, New York had an advantage of from 2c. to 7c. These differentials had been fixed by competition. The history of their formation was reviewed by the Commission at length and it was shown that the natural advantages of Baltimore and Philadelphia were offset by the higher ocean rates from those cities. New York had higher lighterage charges than Philadelphia and Baltimore. The question of ex-lake differentials was also discussed.

Held, (Prouty, C.), (a) that it appeared that of late years the differences in the ocean rates were not sufficient to balance the differentials and that Philadelphia and Baltimore were probably enjoying an unreasonable advantage;

(b) that the only way to determine the propriety of such matters was by results, since too many elements entered into the proper formation of such a differential for its correctness to be determined academically;

(c) that as to flour the differential was clearly too high and should be reduced to 1c. to Philadelphia, and 2c. to Baltimore, but as to the other differentials no order would be made;

(d) that as to the ex-lake differential on grain it would seem that Baltimore and Philadelphia were entitled to a differential of 3-10c. per bushel, but no order would be made.

Clements, C., dissented on the ground that the Commission, by its opinion, was practically approving a division of traffic by the railroads in restraint of competition.

In a memorandum decision reported in 11 I. C. C. Rep. 81 (1905), the fourth finding above was altered with regard to barley, the Commission recommending a differential of 1-6c. per bushel instead of 3-10c. as above.

383.—St. Louis, H. & G. Co. v. Chicago, B. & Q. R. Co., et al. 11 I. C. C. Rep. 82. (May 15, 1905.)

Complaint of reconsignment charge on hay at East St. Louis.

Complainant operated warehouses situated on the lines of the Wiggins Ferry Co. and of the Southern Ry. Co. The hay handled by complainant was usually sent by the country railroads to their team tracks where it was inspected by the consignee and sold to complain-

ant or other purchasers, the purchaser directing the railroad company where to send it. In case complainant purchased, the directions were to send to the Wiggins Co., or to the Southern Ry. Co. These companies made a switching charge to which complainant did not object, but complainant objected to a reconsignment charge of \$2 made by the original road for delivery to the Wiggins Co., or to the Southern Ry. Co., contending that complainant ought to have a chance to designate the final destination after arrival. The Ohio Court had so held in case of intrastate grain. Complainant also contended that, as practically all the grain was shipped out of the State after it reached complainant's warehouse, it was in the course of interstate transportation after it was ordered to the warehouse.

Held, (Prouty, C.), (a) that delivery to the team or hold track was a complete delivery, and if hay so delivered was started again consigned to complainant's warehouse, it was a new journey wholly intrastate;

(b) that the fact that complainant usually sent the grain on to other States, did not make the journey to the warehouse interstate traffic;

(c) that the Commission could not draw a distinction between team-track and hold-track delivery;

(d) that Congress might provide that time be allowed to complainant to designate the point of delivery after the arrival of the hay at the team or hold tracks in case of interstate transportation, but it had not done so; and, in the absence of such provision, the Commission had no power to make such a regulation.

Complaint dismissed.

384-A.—*St. Louis H. & G. Co. v. Mobile, O. R. Co., et al.* 11 I. C. C. Rep. 90. (May 15, 1905.)

Complaint of unreasonable reconsignment charge on hay at East St. Louis.

The railroads running southeast from St. Louis put into effect a proportional hay rate, on hay coming from the north, of 2c. per 100 pounds more than the rate from the Ohio River, but where hay was reconsigned the rate was 4c. above the Ohio River rate. This 4c. charge was imposed only where hay was sent to the warehouse, there unloaded, and reloaded on cars. A shipper bringing in hay at the local rate could forward it upon paying \$2 a car to the line shipping it in, the southern lines carrying it for 2c. over the Ohio River rate. The actual method used on most roads of taking the hay to the warehouse was reviewed (pp. 93-97), and it appeared that the extra cost to the railroads of unloading, etc., was not over \$3.10 per car, while certain advantages to the railroads brought the net cost down to not more than \$2.00 or \$2.50 per car, or 1c. per 100 pounds. There was evidence that at Cincinnati and other competing points, unloading, etc., was done for nothing.

Held, (Prouty, C.), (a) that a through rate might properly be less than the sum of two local rates;

(b) that a stop-over privilege was not a right, but a valuable privilege;

(c) that a railroad company might not discriminate as to stop-overs between competing markets;

(d) that in any event the railroad company should not charge for the privilege more than it actually cost them;

(e) that 1c. was a reasonable charge for the privilege, and 2c. was excessive;

(f) that reparation should be awarded to the amount of half the extra charge paid by complainants.

Order accordingly.

384-B.—St. Louis Hay & Grain Co. v. Southern Ry. Co. 149 Fed. 609; C. C. E. D. Ill. (June 25, 1906.)

Action to recover alleged unreasonable freight charges paid, in accordance with the decision of the Commission in the above case.

The findings of the Commission were affirmed by Wright, D. J., and damages to the amount of \$1659.41 awarded with 5% interest from the date of the award and with costs and attorneys' fee.

384-C.—Southern R. Co. v. St. Louis H. & G. R. Co. 153 Fed. 728; C. C. A. 7th Circuit. (April 16, 1907.)

Appeal from order of C. C. affirming finding of Commission as to 1c. per 100 pounds being a reasonable reconsignment charge for hay at East St. Louis, and awarding reparation for excess paid.

In answer to various objections by the railroad.

Held, (Baker, C. J.), (a) that the Commission's report under Sec. 14 might be received in evidence by the Court sitting without a jury without separation of the findings of fact from the matters of opinion by the Commission;

(b) that no fact could be said to be unsupported by evidence after the Commission had so found it;

(c) that the question involved a comparison not of the reconsignment rate with the local rates from East St. Louis but solely the reasonableness of the through rate from the north with the reconsignment charge, as compared to the rate without it.

Affirmed.

385.—Capital City Gas Co. v. Central Vt. R. Co., et al. 11 I. C. C. Rep. 104. (June 1, 1905.)

Complaint of unreasonable rates on coal from New York points to Montpelier, Vt., and of discrimination in favor of coal for railroad supply.

On coal for railroad supply defendants had a joint through rate of 90c., but on coal for other purposes it charged the sum of the coal rates via Alburgh, Vt., or \$1.85. The circumstances and conditions were otherwise substantially similar.

Held, (Knapp, Ch.), (a) that the dissimilarity of circumstances and conditions mentioned in the Act referred to the matter of carriage and not to the status of the shipper;

(b) that there was a clear discrimination in favor of one class of shippers which should be discontinued.

Order accordingly.

386.—Charlotte Shippers' Ass'n. v. Southern Ry. Co., et al. 11 I. C. C. Rep. 108. (June 22, 1905.)

Complaint of preference of Lynchburg, Va., over Charlotte, N. C., in rates from the north and west.

Such rates to Charlotte were combinations of the Lynchburg rates with the locals from there to Charlotte. Lynchburg rates were very low by reason of fierce competition, and total rates to Charlotte appeared to be reasonable, but by reason of the system, Lynchburg jobbers had a great advantage.

Held, (Clements, C.), that although the Commission strongly disapproved of the basing point system of the southern railroads, yet under the decisions of the Supreme Court, since the Charlotte rate did not appear to be unreasonable, it could not force the railroads to put in a through rate to Charlotte less than the combination on Lynchburg.

Complaint dismissed.

388.—Wylie v. Northern Pacific R. Co., et al. 11 I. C. C. Rep. 145. (June 23, 1905.)

Complaint of preference and discrimination in favor of competing hotel and stage companies controlled by defendant, by less rates to defendant's railroad terminus in favor of persons going by such stage lines or to such hotels.

Defendant railway company operated a railroad from St. Paul, Minn., to Livingston, Mont., and thence south to Gardiner, (Cinnibar) Mont. Of the other defendants, the Yellowstone National Park Transportation Co. ran stages through the park, and the Yellowstone Park Ass'n. conducted hotels in the park. The railroad company held all the stock of a company which owned half the stock in both the stage and hotel companies. The railway company issued tickets by which tourists could go to and through the park, with stage, or with both stage and hotel privileges, taking as its share of the proceeds of such tickets less than its regular return rates to Gardiner. The complainants and interveners ran stage lines and hotels in the park, and since the issuing of the above described ticket, their business had fallen off and that of defendants had increased.

Held, (Knapp, Ch.), (a) that the parties defendant were not competent to form joint routes and rates;

(b) that the fact that travellers were going only by defendant's stage, and were to stay at defendant's hotels, did not justify the lesser railroad rate, which was an unjust discrimination;

(c) that the fact that the tickets so issued were excursion tickets did not alter the case.

Order accordingly.

It was not decided in the above case that a railroad company might not itself operate a stage beyond its line.

389-A.—United States, ex rel. Greenbrier Coal & Coke Co. v. Norfolk & W. R. Co., et al. 138 Fed. 849; See 143 Fed. 266; C. C. S. D. W. Va. (June 24, 1905.)

Motion to quash writ of alternative mandamus issued under the Amendment of 1889, and requiring defendant to furnish relator with a certain portion of cars.

The petition averred an agreement in April 1, 1904, between defendant and all coal companies in the region, to pro-rate its coal cars on the coke-oven basis, and that defendant refused to give them their pro rata share in accordance therewith, the agreement providing for a just division.

Held, (Keller, D. J.), (a) that the only authority in the Federal Courts to issue a mandamus to prevent discriminations was derived from the supplement of 1889;

(b) that in view of the agreement the Court was without jurisdiction, this being merely a proceeding to enforce a contractual agreement.

Writ quashed.

389-B.—United States, ex rel. Greenbrier Coal & Coke Co. v. Norfolk & W. R. Co., et al. 143 Fed. 266; 74 C. C. A. Rep. 404; C. C. A. 4th Cir. (Feb. 6, 1906.)

Error to above.

Held, (Pritchard, C. J.), that this was not a contract, but a mere arrangement or expression of opinion of the parties as to what was a proper basis for equitable distribution of cars and that the jurisdiction of the Court to issue a writ of mandamus was not ousted thereby.

Reversed.

390.—Globe-Wernicke Co. v. Baltimore & O. S. W. R. Co., et al. 11 I. C. C. Rep. 156. (Aug. 10, 1905.)

Complaint of unreasonable rates and classification on sectional book-cases in Official Classification Territory, of preference in rates to other kinds of book-cases, and demand for reparation.

Sectional book-cases were rated as 1½ times first class. At this rate they were the most remunerative freight taking the same rates, and at first class rates they would be more remunerative than some first class freight and less than other. Other kinds of book-cases were also rated at 1½ times first class.

Held, (Knapp, Ch.), (a) that where discrimination was alleged among a class of articles of the same general character and taking the

same rates, the evidence must be very clear to move the Commission to require different rates;

(b) that in the present case no substantial difference was shown between sectional book-cases and other book-cases, and the defendants had not exceeded the discretion allowed them in reference to classification.

Complaint dismissed.

391.—*Kehoe & Co. v. Charleston & W. C. R. Co., et al.* 11 I. C. C. Rep. 166. (Aug. 15, 1905.)

Complaint of unreasonable demurrage charge on freight cars.

The charge was \$1.00 per car per day, 48 hours free time being allowed. This time was not complained of as unreasonably short. The consignees had refused to accept freight and complainants had not been promptly notified of this, although they in fact had known of it. A freight car in service earned on an average about 20c. per day.

Held, (Prouty, C.), (a) that if the reasonableness of the charge depended on the fair rental value of the cars it would here be too high, but the demurrage charge was really a penalty, designed to keep tracks and sidings clear, and \$1.00 was a proper charge;

(b) (semble) that a rule insuring the shipper of prompt notice of consignee's refusal to accept goods should be put in force by the railroads.

Complaints dismissed.

392.—*Kehoe & Co. v. Evansville & T. H. R. Co., et al.* 11 I. C. C. Rep. 172. (Aug. 15, 1905.)

Complaint of refusal to allow shipments at the proportional rate given through shipments from points between Terre Haute and Evansville, Ind., unless the destination was specified, and demand for reparation.

The Evansville & Terre Haute road published no joint rates to points south of Evansville from points between Evansville and Terre Haute. The local rate on hay from Terre Haute to Evansville was 8c. per 100 pounds, but this was not filed with the Commission, since both points were in Indiana. This road filed a proportional rate of 6c. between such points when the hay was consigned to a specific point beyond Evansville, but gave no rates beyond Evansville, and refused to be responsible for such rates. It refused to allow the 6c. rate when the hay was marked simply "for shipment beyond" and consigned to a connecting road. On one such shipment complainant paid the 8c. rate, the 2c. difference amounting to \$4.36.

Held, (Prouty, C.), (a) that it was reasonable for defendant to allow a lower rate when the goods were going on by a connecting road than when destined to Evansville;

(b) that it was unreasonable to require the goods to be billed through to destination in order to get the low rate and where billed

to Evansville in care of a connecting road for shipment beyond they should take the 6c. rate.

Order that defendant pay complainant \$4.36.

393.—Re Freight Rates Between Memphis, Tenn., and Arkansas Points. 11 I. C. C. Rep. 180. (Aug. 15, 1905.)

Investigation of above rates at request of the Memphis Freight Bureau of the St. Louis, South Western Ry. Co., to determine whether or not Memphis was unduly prejudiced.

The Arkansas Commission had recently established very low rates from Little Rock and Pine Bluff, Ark., to points in Arkansas, against which the railroads protested. Certain Memphis-Arkansas rates appeared to be unduly prejudicial to Memphis and were not explained by the railroads.

Held, (Knapp, Ch.), that where the alleged preferences of Little Rock and Pine Bluffs resulted from the low rates prescribed by the Arkansas Commission, the rates from Memphis were not *per se* unreasonable, and the railroads were justified in continuing them, but that certain unexplained discrepancies needed revising.

Ordered that such revision be made.

394.—Re Rates on Corn and Corn Products from the Missouri River to the Pacific Coast, Texas and to Louisiana Points. 11 I. C. C. Rep. 212, 220, 227. (Aug. 16, 1905.)

Investigation, on informal complaint, of differential on corn and corn products as above.

In 1890 the differential against corn products in favor of corn was 9c. per 100 pounds, and later it varied from nothing to 20c. on rates of from 99c. to 50c. At the time of the investigation the differential was 10c., amounting to about 17%. The differential to Texas points had for a long time been 3c., but at the time of the investigation was 5c. Rates to Louisiana points were made the same after the complaint. There was not much difference in the cost of transportation or in risk or value, and the rate over most roads was the same. Evidence was offered of the respective cost of grinding corn at the various points.

Held, (Clements, C.), (a) that it was not the province of the Commission to equalize natural advantages, and that the evidence of the relative cost of milling at Pacific Coast and at the Missouri River was hence irrelevant;

(b) that 5c. was a reasonable differential to the Pacific Coast, and 3c. to Texas points (these amounting to about 10%) and that any higher differential was unreasonable;

(c) that as to the Louisiana shipments, although a differential would seem proper, since the cause of complaint had been removed, no order would be issued.

Order accordingly.

395.—Rock Hill Buggy Co. v. Southern Ry. Co., et al. 11 I. C. C. Rep. 229. (Aug. 16, 1905.)

Complaint of unreasonable rates on buggies from Rock Hill, S. C., to Tallahassee, Fla., as compared with the lower rate to Quincy, Fla., a more distant point by defendant's line, and of violation of Sec. 4.

By defendant's route (via Jacksonville) Quincy was 553 miles, and Tallahassee 529 miles from Rock Hill, but by way of the Atlantic Coast Line route, Quincy was the nearer point, the distance being but 521 miles, with Tallahassee 24 miles farther on. Quincy was nearer to Faceville, Ga., to which a low rate from Savannah was prescribed by the Georgia Commission. The rate complained of was \$1.30 per 100 pounds, while the rate to Quincy was \$1.10.

Held, (Clements, C.), that under the Federal decisions the rate relation was justified by railroad competition.

Complaint dismissed.

396.—Charleston Bureau of Freight and Transportation v. Norfolk & Western R. Co. 11 I. C. C. Rep. 235. (Aug. 16, 1905.)

Complaint of discrimination in favor of Lynchburg, Norfolk and Richmond.

This complaint was held to await the disposition of the complaint of the Wilmington Tariff Association, (See 9 I. C. C. Rep. 118), (298-A-B), and since the Circuit Court of the United States refused to enforce the order of the Commission in that case,

Complaint dismissed.

397.—Re Rates from St. Louis to Texas Common Points, et al. 11 I. C. C. Rep. 238. (Aug. 16, 1905.)

Voluntary investigation by Commission with regard to above rates.

On March 15, 1903, the roads, by evidently concerted action, had made a general advance in the above rates. They sought to justify such advance, first, on the ground of increased cost of operation, and, second, on the ground that the roads should share in the general prosperity of the country. Statistics were offered which showed that the cost of labor and materials had increased, but various economies had about off-set this, and the expenditure of a dollar for labor moved more freight in 1903 than ever before. The business of the roads had greatly increased, but their financial showing was poor. Rates had been steadily advancing.

Held, (Prouty, C.), (a) that the long maintenance of lower rates prior to 1903 was strong evidence of their reasonableness, and threw on the railroads the burden of justifying an advance, and this was especially true where an advance of a formerly competitive rate was made by the concerted action of the roads;

(b) that although in times of prosperity the roads were justified in restoring to a reasonable figure rates lowered in bad times, railroad rates were not governed by the law of supply and demand, or

by "what the traffic would bear," and a rate should not necessarily increase with the market price of the commodity transported;

(c) that although the advances in rates appeared to be unwarranted, in view of the nature of the proceedings and of the poor financial condition of the roads, no order would be made.

399-A.—Cattle Raisers' Ass'n. of Texas v. Missouri, K. & T. R. Co., et al. 11 I. C. C. Rep. 296. (Aug. 16, 1905.)

Complaint of unreasonable rates on cattle from the south and west to Chicago, and of an unreasonable terminal charge at Chicago.

In recent years, especially during 1903, rates on cattle from the south and west had been advanced. The change in charging per hundred pounds, instead of per carload, also increased the rate considerably. The railroads sought to justify the advance on many grounds, such as increased operating expenses, increased cost of handling the small train loads, great risk, expense of cleaning cars, necessity of returning cars empty, carrying free attendants for cattle, fast service, etc., but each of these grounds were shown to be either fallacious or over-estimated. Defendants also claimed that the rates were formerly very low by reason of competition and had now assumed their normal figure. The cost of raising cattle was greater than formerly.

Held, (Prouty, C.), (a) that the advances were all unreasonable, having been made practically by agreement among the railroads to suppress competition;

(b) that the \$2.00 terminal charge at Chicago was unreasonable to the extent of \$1.00, and the railroads should be ordered to desist therefrom. See also 245-A-I.

399-B.—Cattle Raisers' Ass'n. of Texas v. Missouri, K. & T. R. Co. 12 I. C. C. Rep. 1. (Nov. 14, 1906.)

Application for an order under Sec. 15, as amended in 1906, in a pending proceeding, begun before the passage of the Hepburn Act.

This complaint was filed in 1904 and concerned rates on cattle from the south to Kansas City, and other live stock markets having been decided in favor of the complainant in August, 1905. In November, 1905, the complainant moved for more specific findings. The motion was granted and the case again taken under advisement, but no order was made.

Held, (Prouty, C.), (a) that inasmuch as the Amendment to the Act affected the remedy only, and since the Act required merely a formal complaint and a full hearing, both of which requisites had been satisfied, and since the only power remaining to the Commission to make an order came from Sec. 15 of the Amended Act, the Commission now had power to make such an order in a pending case.

The case was set down with leave for the defendants to take additional testimony.

399-C.—Cattle Raisers' Ass'n. of Texas v. Missouri, K. & T. R. Co., et al. 13 I. C. C. Rep. 418. (April 14, 1908.)

Rehearing of foregoing case.

The Commission went over its original findings and also considered new evidence offered by defendants to show increased operating expenses, and also increased prosperity of the cattle business since the original decision. It called attention to errors in the method of calculation by the defendant's statistician, making his conclusions worthless. It appeared that defendants had originally been over-capitalized, and that by the laws of Texas they could not, therefore, issue any more bonds and stock to raise money for necessary improvements.

Held, (Prouty, C.), (a) that the recent advances in rates were, as held in the original opinion (Aug. 15, 1905), still unreasonable;

(b) that the \$2 terminal charge at Chicago was still unreasonable to the extent of \$1;

(c) that reparation would be allowed on claims accruing subsequent to Aug. 29th, 1906, when the complainant's petition was filed under the amended Act.

Knapp, Ch., dissented, holding that the advances and existing rates had become reasonable since the original decision.

399-D.—Stickney v. Interstate Commerce Commission. 164 Fed. 638. C. C. D. Minn., 3rd Div. (June 30, 1908.)

Motion for preliminary injunction to restrain enforcement of order issued by Commission in above, directing the carriers to desist from charging more than \$1.00 per car as a terminal charge on live stock at Chicago.

It was conceded by the pleadings that the actual cost to complainants of carrying live stock from their respective terminals at the ends of their lines or roads in Chicago to the Union Stockyards exceeded the sum of \$2.00 per car. The ground of the Commission's order was not that the terminal charge was unreasonable for the service performed as segregated from the main service of transportation, but that by the addition of \$2.00 per car to the rate which formerly included the terminal service, the total charge became unreasonable.

Held, (Adams, C. J.), (a) that the Act directs the segregation of terminal charges and the stating of them separately in the schedules, and that neither the Commission nor the courts have the right to complicate such charge with any other service in determining the reasonableness of the terminal charge;

(b) that although the findings of fact on controverted or conflicting evidence by the Commission, when not brought about by fraud and mistake, were generally conclusive and ought not to be disturbed by the courts, yet when facts found, conceded or established without dispute admitted of but one legal conclusion, and a different and erroneous one was reached by reason of a misconception and a mis-

application of law, its action was subject to review and might and ought to be avoided by the courts;

(c) that in order for carriers to obtain relief against the orders of the Commission it was not necessary to show that by reason of the order their total revenues were reduced below a reasonable figure, but that the reasonableness of the separate rates fixed by the Commission might be considered separately.

Injunction granted with provision for complainants to furnish a bond.

399-E.—Missouri, K. & T. R. Co. v. Interstate Commerce Commission. 164 Fed. 645. C. C. E. D. Mo. (Oct. 23, 1908.)

Motion for preliminary injunction to annul and enjoin enforcement of Commission's order in 399-B.

Held, (Per Curiam), (a) that neither Congress nor a body authorized by it might constitutionally establish rates for the transportation of property in interstate commerce that would not admit of the carrier earning reasonable compensation for the service;

(b) that the power of the Commission to prescribe maximum rates did not preclude judicial inquiry into the justice and reasonableness of the rates prescribed:

(c) that in determining the reasonableness of rates, due regard must be had not only to the cost to the carrier, but also to the value of service to the public, and where the carrier's business could not reasonably be conducted so as to render it profitable, the misfortune must fall upon the carrier;

(d) that the statute requires that the rates prescribed by the Commission shall be just and reasonable and not unjustly discriminatory or unduly preferential;

(e) that the scope of inquiry which a court is authorized to make and the effect of the Commission's findings are the same when the suit is one to annul or enjoin enforcement of an order as when it is one to enforce obedience thereto;

(f) that on hearing of such a suit, the court is not confined to the facts before the Commission, but the hearing may be *de novo* and include the taking and consideration of evidence other than that before the Commission;

(g) that the question as to whether, if it appeared to the court that in the proceedings before the Commission the carrier had declined or neglected fairly to avail itself of the opportunity to be heard in opposition to the order, the court in its discretion should refuse equitable relief and require that the question first be presented to the Commission, was not decided in this case;

(h) that the burden of showing that the facts were such as to render the Commission's order invalid, rested upon the carriers assailing it, and that unless the case made on behalf of the carrier was a clear one, the order should be upheld;

(i) that the showing in this case was "clearly wanting in that

certainty, fullness, and persuasive force which ought to be and is essential to overcome the force of the Commission's finding or determination upon which the order is based."

Preliminary injunction denied. See also 245-A-I.

400.—Spiegle & Company v. Chesapeake & O. R. Co., et al. 11 I. C. C. Rep. 367. (Oct. 17, 1905.)

Complaint of a higher lumber rate from Grafton and Gordonsville, Va., to Philadelphia, than that from Stanton and Basic City, Va., more distant points.

The tariff rate for the shorter distance was 16c. per 100 pounds, and that for the longer distance 14c. Complainant submitted no proof and did not appear at the hearing. Defendant showed competition with the Baltimore & Ohio, and with the Norfolk & Western, at the more distant points.

Held, (Fifer, C.), that although the burden of proof was on defendants to justify the greater charge for the less distance, they had sustained it, by proof of competition at the more distant points.

Complaint dismissed.

401.—City Gas Co. of Norfolk v. Baltimore & O. R. Co. 11 I. C. C. Rep. 371. (Oct. 17, 1905.)

Complaint of preference against Norfolk in rates on coal from the mines to Baltimore, and demand for reparation.

Defendant's local coal rate to Baltimore was \$1.80, with 30c. reduction if destined to points inside the capes, except Norfolk and three other points, and 42c. less if destined outside the capes. The coal destined outside of the capes was handled at a separate dock. The system was the result of a traffic division between the Baltimore & Ohio, Chesapeake & Ohio, and Norfolk & Western Railroads, the rates of the last named road to Norfolk being lower. Complainant preferred the B. & O. coal to that from the line of the N. & W.

Held, (Fifer, C.), (a) that as to rates to points inside the capes there was a clear discrimination against Norfolk;

(b) that the Commission would not pass on the rate on coal destined outside the capes;

(c) (semble) that in the latter case the rate to Baltimore was probably not a part of a through rate by rail and water.

Order accordingly, reparation being regarded as prayed for.

402.—Planters Compress Co. v. Cleveland, C. C. & St. L. R. Co., et al. 11 I. C. C. Rep. 382. (Oct. 19, 1905.)

Complaint of unreasonable rates on cotton shipped in round bales, and of discrimination in favor of that shipped in square bales.

Complainant was the owner of a patent device for compressing cotton into round bales. Ordinary uncompressed cotton from the gin was made into bales weighing 12½ pounds to the foot, and loading 12,500 pounds in a car. Cotton compressed by the square bale process extensively in use (90% of the cotton being compressed in this way),

reduced the bale in size so that it weighed 23 pounds to the foot, and loaded 25,000 pounds in a car. Cotton compressed by complainant's process into the round bales weighed 46 pounds to the foot and loaded 50,000 pounds to the car. From East St. Louis to the Atlantic Coast the rate on compressed cotton was 30c. per 100 pounds, and throughout the country there was a higher rate on uncompressed, the difference varying from 12½c. to 6c. per 100 pounds. There were no carload rates on cotton. Ocean carriers gave round-baled cotton a rate 25% below that in square bales, and a few railroads also made a lower rate on the latter kind. Although complainant had formerly got a secret rate of 20c. on round-baled, this rate had since been discontinued by the roads, who owned most of the square-baled compresses. There was evidence that the round-bale process injured the cotton. The round-bale machines cost about \$3500, and were small so that they could be set up at the gin, while the square-bale ones were large and expensive and confined to a few points to which the cotton of the vicinity was taken for compression. The total cost of compressing by the round-bale method was greater than by the square. Where cotton was shipped uncompressed, the roads practically always compressed it at a cost of 10c. per 100 pounds. Cotton shipments were always in lots of 100 bales or more. The Texas Commission had ordered lower intrastate rates on round-bales, but had been reversed by the Texas Supreme Court. (96 Tex. 394.)

Held, (Knapp, Ch.), (a) that the Commission had nothing to do with the respective merits of the two processes as regards their injurious effect on the product;

(b) that railroads had a certain discretion as to rates and classification which was not here exceeded;

(c) that cost of service and loading capacity were in many cases important considerations in the rate making, but not always controlling;

(d) that if the rate on an article was reasonable in the way it was shipped and handled by the great bulk of shippers, it was not unreasonable as to one shipper who put a small proportion of it in a form on which the railroad secured a greater profit, but which was available only to a few shippers.

Complaint dismissed.

Prouty, C., dissented, holding that, admitting the wide discretion allowed carriers with regard to classification, if a 30c. rate was reasonable as to shipments in 25,000 pounds to the carload, and if the roads voluntarily paid 10c. per 100 pounds to increase the carload from 12,500 to 25,000 pounds, the 30c. rate was clearly unreasonable as to a 50,000 pound carload; that the principle on which the majority decision was really based would clog invention, and it was not the province of the Commission to protect processes in use against superior ones, but to see that rates were reasonable.

403.—*Miner v. New York, N. H. & H. R. Co.* 11 I. C. C. Rep. 422. (Nov. 1, 1905.)

Complaint of discrimination against complainant in favor of other meat dealers in unloading privileges at Providence, R. I.

Defendant had a siding along which the warehouses of complainant's competitors were located, so that beef might be unloaded from the track into their storehouses. On the other side of the track there was space enough for complainant's wagons to stand and allow loading into them from the cars. Complainant's warehouse was a short distance away from the siding across a canal. When complainant built it, defendant was allowing another meat dealer, situated across the canal near complainant's warehouse, to unload his meat into wagons from the siding as complainant wished to do, but had since refused this privilege to all, stating that it would clog up the siding to allow every one to unload there. This would not follow, however, if only meat dealers were allowed the privilege, though it would if dealers in all articles were allowed it. As a result, complainant had to haul his meat a considerable distance from another freight yard, spoiling it to the extent of \$20 to \$100 per carload.

Held, (Prouty C.), (a) that to allow complainant's competitors to unload direct into their warehouses and at the same time, to refuse to allow complainant to unload into his wagons on the other side of the track, was an undue preference in favor of them;

(b) that the allowance of the privilege to all meat dealers would not necessitate its allowance to dealers in non-competitive commodities;

(c) that no order would issue as yet, but if defendant persisted in the discrimination an order would be made.

404.—*Red Rock Fuel Co. v. Baltimore & Ohio R. Co.* 11 I. C. C. Rep. 438. (Nov. 25, 1905.)

Complaint of discrimination and preference in allowing sidings to competing mines and while denying one to complainant.

Complainant owned 4,000 acres of coal land near a branch of defendant's road and had coal mined and ready to ship on contracts for interstate shipments, but could not ship unless it had a switch connection like that allowed to rival mines in the same field. Complainant had done all the necessary grading, etc., had laid tracks up to defendant's right of way and stood ready to bear all the expenses necessary to make the required switch connection. Defendant sought to justify its refusal to allow the connection, *inter alia*, on the ground that it was unable to give ample facilities to shippers already in the field, that complainant's situation was such as to make the expense of hauling out its coal great, and that its policy was to keep out small shippers, who shipped only when prices were high, and to prefer large ones who shipped continuously regardless of current market prices. The real reason of the refusal lay in the fact that defendant owned a controlling interest in the Fairmont Coal Co., which operated a great number of the mines in this region, and defen-

dant wished to give this company a monopoly in the region as far as possible.

Held, (Fifer,) (a) that as regards the extra expense of hauling out complainant's coal, defendant might charge a rate sufficient to compensate for this;

(b) that the fact that more aggregate coal could be got to market by preferring large shippers did not justify a denial of equal facilities to small ones;

(c) that although the Commission had no power to order a railroad to allow a siding switch connection, it could order it to cease a preference in giving a switch to one and denying it to competitor similarly situated;

(d) that the situation of the mines of those allowed switches was essentially similar to complainant's;

(e) that it was no defense that defendant might withdraw the switches of complainant's competitors at any time;

(f) that the fact that the State of West Virginia had power to order defendant to give complainant a switch for intrastate traffic in no way affected the power of Congress or the Commission to order one for interstate traffic.

Order accordingly.

405.—Artz v. Seaboard Air Line Ry. 11 I. C. C. Rep. 458. (Nov. 29, 1905.)

Complaint of unreasonable passenger rate from Fernandina, Fla., to Savannah, Ga.

Defendant's first class passenger tariff from Fernandina to Savannah, 124 miles, was \$5, while the Georgia and Florida interstate rates were fixed by law at 3c. per mile; and through passengers paid less than complainant by buying two tickets. The road was laid through swamps and sparsely settled country, and was expensive to maintain. Generally speaking, the defendant's interstate rates were not higher than the sum of the locals. If reduced to 3c. per mile, the earnings of this particular haul would be less than the average on the rest of defendant's system, and on the other roads in this section of the country.

Held, (Prouty, C.), that this was an exception to the usual rule that the through rate should be no greater than the sum of the locals; and the rate charged was not unreasonable.

Complaint dismissed.

406.—United States v. Atchison, T. & S. F. R. Co. 142 Fed. 176. C. C. W. D. Mo. W. D. (Dec. 4, 1905.)

Information for contempt for violation of an injunction issued in 1902, at the relation of the United States Attorney, prohibiting defendant from granting rebates. On motion to quash same. (See also 333.)

In March, 1902, an order was issued by the Circuit Court, based on

a bill of complaint filed by the United States at the request of the Commission, charging defendant with granting rebates on packing house products and grain. The injunction contained a general clause prohibiting rebates on other interstate traffic. In August, 1905, this information was filed, charging violations of the restraining order between its issuance and Jan. 1, 1904, in large divisions of through rates to the Hutchinson & Arkansas River Railroad Co., a road one mile in length connecting defendant's tracks with the mill of the Hutchinson Salt Co., and owned by the stockholders of the latter. Violations were also charged in rebates to the Colorado Fuel & Iron Co. during 1903 and 1904. Subsequent to the passage of the Elkins Act the Court, by order, continued in force the restraining order, but no new proceeding had been brought by the United States Attorney.

Held, (Phillips, D. J.), (a) that prior to the Elkins Act the United States Circuit Court had no jurisdiction in equity over a suit by the United States Attorney General to enjoin a railroad from granting rebates, especially where no order had been made by the Commission on such railroad to discontinue the practice, and the original order had, therefore, been issued by a Court having no jurisdiction and was hence void;

(b) that the order was not validated by the passage of the Elkins Act, which was prospective only in its operation;

(c) nor was it validated by the continuance of the order by the Court subsequent to the passage of the Elkins Act;

(d) nor did the information, filed by the United States Attorney, subsequent to the passage of the Elkins Act, bring such void order within the operation of the Elkins Act;

(e) that the omnibus clause in the restraining order referred only to commodities "*ejusdem generis*" with packing house products and grain, and did not cover rebates on salt or coal;

(f) (semble) that an information against a carrier for granting rebates could not be sustained by evidence tending to show a grossly disproportionate division of a through rate to a short road owned by a shipper, the latter being the real offender.

Motion sustained.

407.—*Brabham, et al. v. Atlantic Coast Line, et al.* 11 I. C. C. Rep. 464. (Dec. 7, 1905.)

Complaint of unreasonable passenger rates from South Carolina to Georgia points.

Defendant's passenger rates between certain points in South Carolina and certain points in Georgia, were about 4c. a mile. The statutes of South Carolina and Georgia fixed a 3c. maximum rate. Figures were given by defendants showing a poor return to the railroads on the capital invested, and a light passenger traffic.

Held, (Cockrell, C.), (a) that the presumption was that the statutory rates were reasonable, and the burden was on the railroad to show the contrary, but this presumption was not conclusive;

(b) that in this case the rate was not unreasonable;

(c) that a railroad was entitled to a fair return on that which it employed for the public convenience, and that in view of the scanty traffic, etc., the interstate rates in question were not unreasonable.

Complaint dismissed.

408.—**Dewey Bros. Co. v. Baltimore & O. R. Co., et al.** 11 I. C. C. Rep. 475. (Dec. 15, 1905.)

Complaint of overcharge on hay from Ohio to North Carolina points, and that the published rate was unreasonable, and violated Secs. 3 and 4.

Complainant was a hay merchant at Pataskala, Ohio, and shipped to two points in North Carolina. As to one shipment he proved that he had been charged a rate 1c. per 100 pounds higher than the tariff provided, but as to the other shipment the evidence was vague. The rate from Pataskala was higher than that from Columbus, 17 miles west on the same line, but Columbus was a competitive point.

Held, (Clements, C.), (a) that under the Federal decisions a lower rate from Columbus was proper;

(b) that the overcharge of 1c. per 100 pounds should be refunded on the shipment proved;

(c) that the case would be left open, to give the roads an opportunity to settle for the second shipment, or to allow the complainant to present more evidence with respect thereto.

Order accordingly.

409.—**Dewey Bros. Co. v. Baltimore & O. R. Co., et al.** 11 I. C. C. Rep. 481. (Dec. 15, 1905.)

Complaint of overcharge on hay from Ohio to North Carolina points, of violation of shipping instructions, and demand for reparation.

Complainant shipped a carload of hay from Summit, Ohio, to Lenoir, N. C. Both complainant and defendant agreed at the argument that shipping instructions had been given, complainant alleging that he had ordered the shipment routed via a route by which the rate would be 35c. per 100 pounds, and defendant alleging that he ordered it via a longer, 46c. route. It was in fact routed in the latter way and complainant demanded a refund of the excess.

Held, (Clements, C.), (a) that in the absence of instructions by a shipper it was a railroad's duty to route freight by the shortest and cheapest route, and to charge the lowest tariff combination, and if the railroad routed contrary to instructions, the shipper might recover the excess charge;

(b) that in the present case this rule did not apply, as shipping instructions had been given and the evidence did not show whether the defendant had obeyed them or not;

(c) that the complainant had not made a case for relief.

Complaint dismissed.

410.—St. Louis H. & G. Co. v. Ills. Cent. R. Co. 11 I. C. C. Rep. 486. (Dec. 20, 1905.)

Complaint of rates on hay reconsigned at East St. Louis to Mobile and New Orleans, higher than the proportion of through rates via St. Louis to those points.

Complainant bought hay coming to St. Louis from the east and south, and shipped it to Memphis, New Orleans and other points. The local rate to Memphis was 12c. per 100 pounds, and to New Orleans was 20c., but there was a "reconsignment" rate of 10c. and 17½c. for hay previously shipped into East St. Louis and then out again on a local rate. The proportion of the through rate was sometimes less than the reconsignment rate. Instances were cited where there was no published through rate. The railroad company had accepted the local and the reconsignment rate on the shipment which was the subject of complaint.

Held, (Knapp, Ch.), (a) that it was considerably cheaper for the railroad company to handle hay billed through than that reconsigned, as less switching was required, so a less charge was proper;

(b) that it was proper for the through rate to be less than the sum of the locals;

(c) that where no through rate was published, however, the through rate should be the sum of the locals, and the acceptance of the local and reconsignment rates as a through rate was unlawful;

(d) that it was immaterial that the reconsignment rate was sometimes the same as the proportion of the through rate, since the proportions of through rates to different points might properly vary;

(e) that the failure to publish was in this case accidental and the difference in rates was not shown to be material.

Complaint dismissed.

411-A.—United States v. Milwaukee Refrig. Transit Co., et al. 142 Fed. 247. C. C. E. D. Wis. (Dec. 28, 1905.)

Bill for injunction under the Elkins Act to prevent rebates by payments of commissions for soliciting traffic to a corporation owned by the stockholders of a shipper. Demurrers and motion to strike out.

The bill alleged that prior to the Elkins Act the Pabst Brewing Co. habitually received rebates. After that Act the stockholders organized the Milwaukee Refrigerator Transit Co., and gave it an exclusive contract to route their product. It gave the business only to roads which would allow it one-eighth to one-tenth of the freight as commissions for soliciting the business. There were a number of roads which could haul the freight in question, and some were joined as defendants. It was alleged that the roads knew that this was a mere device to avoid the Act.

Held, (Sanborn, D. J.), (a) that this was an illegal device for rebating, forbidden by the Act;

(b) that the Court would look through the corporate entities and,

for the purposes of this case, the Transit and Brewing Companies were the same;

(c) that on the question of intention, the prior rebating was relevant.

Demurrer overruled and motion to strike out denied.

411-B.—United States v. Milwaukee Refrig. Transit Co. 145 Fed. 1007. C. C. E. D. Wis. (Grossep, Seaman, Baker and Kohl-saat, Cir. Judges). (May 31, 1906.)

Proceeding to enjoin the giving and receiving of rebates by means of a corporation organized by stockholders in a shipper company, receiving commissions from carriers for soliciting business.

It appeared that a majority of the stock in the Brewing Co. was owned by persons not interested in the Refrigeration Co., (Mrs. Pabst) though the majority of the latter stock was owned by holders of the Brewing Co. stock. It also appeared that the Attorney General had begun this proceeding at the instance of a rival company and had retained their attorney as special counsel.

Held, (Baker, C. J.), (a) that as to the Brewing Company, the charges were dismissed for failure of proof;

(b) that the fact that the acts complained of constituted a crime was no objection to a bill in equity under the Elkins Act to enjoin their commission;

(c) that this proceeding, under Sec. 3 of the Elkins Act, was properly begun by the Attorney General, of his own motion, without the intervention of the Commission, and the retention of special counsel by the Attorney General was proper;

(d) that the Refrigeration Company, having absolute control over the traffic, was really a shipper, and if not was a "party interested in the traffic" subject to the Act.

Decree entered against the defendant Refrigerator and Railroad Companies in accordance with the prayer of the petition.

412.—Kindel v. Boston & Albany R. Co., et al. 11 I. C. C. Rep. 495. (Dec. 28, 1905.)

Complaint of unreasonable rates on cotton-piece goods in carloads from the east to Denver.

The carload rate on such goods to San Francisco from New York was \$1.00 per 100 pounds and in less than carloads \$1.50. To Denver there was no carload rate on tickings and drills, the rate of \$2.24 being made by combining the New York-Mississippi River, the Mississippi River-Missouri River and Missouri River-Denver rates. The latter distance was 500 miles and the rate \$1.25, while the total distance to Denver was about 2,000 miles, and from Denver to San Francisco, 500 miles. In other parts of the country cotton-piece goods were taken at a large differential under the first class rates, but from the Missouri River to Denver they went at full first class. The low rate to San Francisco was forced by water competition, the

rates by sea being still 20% below the rail rates. Carload rates to Denver and Salt Lake City had been put in force by defendants on ducks and denims to encourage certain manufacturers, but had been denied to tickings and drills though these were goods of the same general nature. The usual unit of shipment of these goods appeared to be the bale and not the carload.

Held, (Clements, C.), (a) that the Commission always hesitated to order a railroad to allow a carload rate where none existed, since such a rate benefited the large shipper to the disadvantage of the small, and this was especially the case where, as here, the usual unit of shipment was the bale and not the carload;

(b) that the rate to San Francisco, being forced by water competition, was not a proper measure for the rate to Denver;

(c) that a railroad could not legally exact a rate to a competitive point below the cost of the service and charge the loss on other traffic and the San Francisco rate must be presumed not to net the roads a loss;

(d) that if defendants carried the goods in question to San Francisco for cost at \$1.50 they could surely realize a reasonable profit on hauling them at that rate for 1500 miles less distance over the most difficult part of the haul;

(e) that the \$2.24 rate to Denver, being a combination of local rates, was unreasonable and should not exceed \$1.50.

Order accordingly.

413.—Kindel v. New York, N. H. & H. R. Co., et al. 11 I. C. C. Rep. 514. (Dec. 28, 1905.)

Demand for reparation for unreasonable charge on cotton piece goods from Boston to Denver.

Complainant had shipped cotton piece goods from Boston at \$2.24 per 100 pounds, the rate declared unreasonable in the preceding case (412.) He could have shipped them by sea and rail at \$1.85, but evidently sent them as he did as a part of his general attack on the rate and in order to test it.

Held, (Clements, C.), that in view of the facts no reparation should be ordered.

414.—Newman v. New York Central R. Co., et al. 11 I. C. C. Rep. 517. (Jan. 10, 1906.)

Complaint of unreasonable rates and classification on leather scraps from the west to New York.

Complainant was engaged in the business of buying leather scraps from western manufacturers and shipping them in bags to New York, where they were sorted and made up into small leather articles. For 16 years prior to 1905 such scraps were taken at third class rates, but the roads then put in force a rule refusing these rates to all scraps which were available for the manufacture of leather goods, thus compelling complainant to pay the second class rates applicable

to leather, which was valued at from 25c. to 45c. per pound for the cheapest grades, while leather scraps were worth but 2c. to 5c.

Held, (Prouty, C.), (a) that although the Commission had held that railroads need not make a separate classification for brushes with wooden and iron handles (*Derr Co. v. P. R. R.*, et al., 9 I. C. C. Rep. 646). (331), or for compressed and uncompressed cotton (*Planters' Compress Co. v. C. C. C. & St. L.*, 11 I. C. C. Rep. 382), (402), these cases were distinguishable from the present on the ground that the articles were the same, while here leather scraps were distinct from leather and bought and sold as a separate commodity;

(b) that in view of the difference in value and of the fact that leather scraps had been given third class rates for 16 years prior to 1905, second class rates were unreasonable and third class rates proper.

Order accordingly.

415.—Griffin Grocery Co. v. Southern Ry. 11 I. C. C. Rep. 522. (Jan. 12, 1906.)

Complaint of preference in rates of Macon and Atlanta, Ga., over Griffin, Ga., and of violation of Sec. 4, as regards such rates.

Griffin was situated between Macon and Atlanta. Rates to the two latter cities were lower than to Griffin in each direction by the amount of the local rate to Griffin in every case. The total rate to Griffin was not shown to be unreasonable and there was stronger competition at Macon and Atlanta than at Griffin.

Held, (Clements, C.), that under the Federal decisions, since the Griffin rate was not shown to be unreasonable, and since the circumstances and conditions were different at Macon and Atlanta from those at Griffin, the complaint should be dismissed.

416.—Schiedel v. Chicago & N. W. and Union Pac. R. Cos. 11 I. C. C. Rep. 532. (Jan. 18, 1906.)

Complaint of unreasonable rate and classification of certain electrical apparatus.

Complainant, at Chicago, manufactured an electrical outfit, which would transform a low voltage into a high one. It was used largely in making the X-rays, but these could be made in other ways, by the use of more fragile instruments. Complainant's apparatus was classed at the double first class rate given to X-ray apparatus and scientific and medical instruments, while ordinary electrical apparatus took a straight first class rate.

Held, (Prouty, C.), (a) that classification was a difficult matter to adjust with exactness, and here the classification appeared to be proper;

(b) (semble) that if the apparatus came into more general use, it might be a proper case for a reduction.

Complaint dismissed.

417.—*Carter v. New Orleans & N. E. R. Co.* 143 Fed. 99; 74 C. C. A. Rep. 293; C. C. A. 5th Cir. (Jan. 24, 1906.)

Error to C. C. overruling demurrer to plea of Statute of Limitations in action for damages for discrimination under Secs. 2 and 8 of the Act of 1887.

The Miss. Code specified one year from the time of the offense as the period of Limitations in Actions for penalty or forfeiture. The United States Revised Statutes fixed the period as five years for the prosecution of penalties and forfeitures accruing under the laws of the United States.

Held, (Pardee, C. J.), that this action was one for damages resulting to the plaintiff from the acts of the defendant and not a suit for a penalty or forfeiture under any penal statute.

Judgment reversed and cause remanded with instructions to sustain the demurrer.

418.—*Cannon v. Mobile & Ohio R. Co.* 11 I. C. C. 537. (Jan. 15, 1906.)

Complaint of unreasonable earload rates on flour from Illinois points to Gordo, Ala.

Rates over other lines in the vicinity were at the time considerably lower than those in question. It also appeared that although a barrel of flour weighed approximately 200 pounds, the rate per barrel was in this region sometimes more than double the commodity rate per 100 pounds in sacks.

Held, (Clements, J.), (a) that cost of service and distance were considerations which a road could not ignore, but these considerations were not the sole controlling factors in every case;

(b) that rates over other lines were often valuable as a basis of comparison but not decisive;

(c) that the evidence did not show that the rates in question were unreasonable;

(d) that a different rate on the same article without a reason for the difference was manifestly illegal and should be adjusted by the defendants.

419.—*Hoerr v. Chicago, M. & St. P. R. Co.* 11 I. C. C. Rep. 547. (Feb. 9, 1906.)

Complaint of unreasonable potato rates from Mankato and Good Thunder, Minn., to eastern points, and of preference of St. Paul shippers, and demand for reparation.

The St. Paul rates east on all commodities except grain and potatoes were made by combinations on Chicago, and the rates on potatoes from Mankato and Good Thunder, points southeast of St. Paul, were so formed, but St. Paul had a special commodity rate of 37c. to New York on potatoes, this rate having been put in first by the Soo Line, but being now maintained by defendant to non-competitive eastern points. The Mankato rate was 48c.

Held, (Prouty, C.), (a) that although if the St. Paul rate were a competitive one the rate relations in question might be proper, yet as it was a non-competitive rate the difference between it and the Mankato rate should not exceed 4c.;

(b) that a higher rate than 41c. was unreasonable, and the excess should be refunded.

Order accordingly.

420.—*Clark Co. v. Lake Shore & M. S. R. Co., et al.* 11 I. C. C. Rep. 558. (Feb. 14, 1906.)

Complaint of preference of Standard Oil Co. by refusal of one defendant to prorate with the others on shipments of oil from the oil fields to New England.

Complainant Company was a refiner at Pittsburg and Cleveland. The New York, New Haven & Hartford R. R., although joining in through rates with roads from the west on all other commodities, refused to prorate with them on petroleum, whereby the rate was increased by from 8 to 9c. per 100 pounds. The Standard Oil Co. sent its oil by pipe-line to the coast, and from there by tank steamer to New England points, and thus secured a practical monopoly in this field. The justification set up by the N. Y., N. H. & H. R. R., that it was dangerous to ship petroleum except in train loads, was not substantiated by the evidence as to its practice with the oil of the Standard Oil Co. in New England. It was to the advantage of this railroad to deal solely with the Standard Oil Co., it being cheaper to handle large shipments than small ones. It did not appear conclusively that the refusal to prorate on petroleum was done for the purpose of giving the Standard Oil Co. a monopoly.

Held, (Prouty, C.), (a) that the refusal to join in a through rate on petroleum while doing so on other commodities, was not a discrimination or a preference within the Act, since such articles did not compete with petroleum;

(b) that the fact that it was to the advantage of a railroad to deal solely with one large shipper, did not justify it in discriminating against small shippers;

(c) that the refusal to make joint rates in the present case was unjust and unreasonable, and resulted in excessive rates, which excluded complainant and allowed the Standard Oil Co. to charge a higher rate than it otherwise could if complainant could compete;

(d) that the advantage of the Standard Oil Co. did not result from any facility offered it by the railroad and denied to complainant;

(e) that in order to grant the necessary relief the Commission must have the power to order railroads to join in through rates, which under the Act it did not possess.

Complaint dismissed.

421.—*Interstate Commerce Commission v. Reichmann.* 145 Fed. 235 C. C. N. D. Ill. (Feb. 27, 1906.)

Application by the Commission for an order on an officer of a private car company to answer a question as to amounts paid by his company to shippers.

The Street Car Co. owned 9,000 cars, on which it was paid mileage by railroads. It thus being to its advantage to have its cars used, it paid premiums to shippers using them. The question here involved was whether the Act prohibited such a payment where the Car Co. acted entirely on its own initiative and not as the agent of the railroad.

Held, (Landis, D. J.), (a) that Congress had power to prevent all persons or corporations from doing anything at all to disturb the uniformity of treatment of shippers in interstate commerce;

(b) that Sec. 1 of the Elkins Act prohibited any one whatever from putting one shipper on a better footing than his competitor;

(c) that this Act prohibited the Car Co. from giving to shippers any advantage not open to all, and not stated in the published tariffs of the carrier.

Order entered in accordance with prayer of petition.

422.—National Machinery & Wrecking Co. v. Pittsburg, C. C. & St. L. R. Co., et al. 11 I. C. C. Rep. 581. (March 23, 1906.)

Complaint of unreasonable classification for second-hand dynamos sold for scrap.

Complainant bought second-hand dynamos to break up for scrap iron and copper. One was shipped, crated as a dynamo would be, and though marked "scrap," it could not well be distinguished from a good dynamo being sent to a factory for repairs. It was rated first class, as a new dynamo. Copper scrap went third class, but to get this rate the roads required that an old dynamo be so mutilated or broken up as to be obviously incapable of repair.

Held, (Prouty, C.), (a) that although a road might properly give a reduced rate to second-hand articles, it was not bound to do so;

(b) that where a dynamo such as that in question was shipped uncrated or mutilated, it should take the "scrap" or "junk" third class rate, but that in this case defendant was justified in charging full first class rates since the dynamo shipped was crated like one returned for repairs.

423.—United States v. Wood, et al. 145 Fed. 405. D. C. E. D. Pa. (April 2, 1906.)

Charge to jury an indictment for receiving rebates, in violation of Elkins Act.

There was no through rate filed on iron pipe from Philadelphia to Winnepeg, where the shipment on which the alleged rebate was paid, was hauled. The rate published to Duluth was 24½c., which was via Phila. & Reading or Baltimore & Ohio and the Mutual Transit Co. The latter had filed no concurrence as to this rate, but had participated in the proceeds of shipments under it. From Duluth to Winne-

peg the rate filed by the Great Northern R. Co. was 25c.. Defendant paid 49½c. and received back 4½c., but alleged that he turned it over to the Camden Iron Works and received no benefit from it.

Held, (Holland, D. J.), (a) that where no through rate was filed the only legal rate was the sum of the locals filed;

(b) that for a shipper to receive a less rate than this, was a rebate;

(c) that the successive receipt and forwarding in the ordinary course of business by two or more carriers in interstate traffic, under through bills, or any arrangement for continuous carriage over their lines, constituted a common arrangement within the meaning of the Act, no express agreement to form a through rate being required;

(d) quære as to whether, as against a shipper, participation in through business by a connecting carrier was not sufficient to bind the shipper to observe a tariff not filed by such participating carrier.

424.—Re Enterprise Transportation Co., Discriminations Against.
11 I. C. C. Rep. 587. (April 5, 1906.)

Complaint by Steamship Company of refusal by railroads to establish the same joint rates with it as were established with rival steamship companies.

Prior to the organization of the complainant company in 1905, the New York, New Haven & Hartford R. Co., had a monopoly of freight from Fall River to New York and via New York to the west, by means of the Fall River Line of steamers, which were owned by the N. Y., N. H. & H. and with which railroads out of New York made through rates, receiving as their division of the rate on cotton piece goods 42c. per 100 pounds, and making the total rate from Fall River to Chicago 55c., the same as the rate from New York to Chicago. These roads refused to make a similar arrangement with complainant. It had reduced local rates from Fall River to New York considerably by its competition, but the through traffic was the larger part and the Fall River Line had it in its power to reduce local rates, still receiving a profit on through traffic, until it drove complainant into bankruptcy, when it might put rates up again.

Held, (Prouty, C.), that although complainant was certainly entitled to relief, yet until the Act should be amended so as to give the Commission or the Courts power to order a railroad to join in through rates with a water line, the Commission had no power to grant relief.

Complaint dismissed.

425.—Moran & Son v. Missouri Pac. R. Co., et al. 11 I. C. C. Rep. 598. (April 5, 1906.)

Complaint of unreasonable flour rates from Lamar, Mo., to Hope, Ark., via Little Rock, Ark.

The Arkansas Railroad Commission had fixed a flour rate of 11c. from Little Rock to Hope. The St. Louis & Iron Mountain road,

which was controlled by the Missouri Pacific Ry., charged 20c. per 100 pounds (formerly 42c., but recently reduced), for the haul from Little Rock to Hope on all freight coming from without the State over roads other than the Missouri Pacific. The difference between 42c. and 20c. on shipments made by the complainant had been refunded.

Held, (Clements, C.), (a) that even a rate of 20c. was grossly unreasonable, there being nothing to show that the local rate prescribed by the Arkansas Commission was unreasonably low;

(b) that although a road might form connections with whom it pleased, it could not in any event charge a grossly unreasonable rate.

Order for refund of excess rates paid above 11c., and that defendant desist from charging more than this rate in future.

426.—Planters' Compress Co. v. Missouri, K. & T. R. Co., et al.
11 I. C. C. Rep. 606. (April 6, 1906.)

Complaint of unreasonable rates on round-bale cotton from Prior Creek, I. T., to St. Louis, Mo., as compared with those on square-bale and uncompressed cotton. (See also 402.)

Prior Creek was 461 miles south of St. Louis and 102 miles north of South McAlester. At the latter point there was a square-bale compress, and all the uncompressed cotton delivered to the railroad at Prior Creek was taken to South McAlester for compression before shipment to St. Louis. The rate on uncompressed cotton from Prior Creek was 65c. per 100 pounds and from South McAlester 70c., and on compressed (square or round) 10c. less. Cotton compressed by complainant's method at Prior Creek could thus be taken by the carrier at once to St. Louis while uncompressed cotton had to be hauled south 102 miles to South McAlester for compression before final shipment from there (there being no square compress at Prior Creek.) There were many empty cars in the direction of St. Louis.

Held, (Knapp, Ch.), that the necessity for hauling cotton not compressed by complainant's process to South McAlester and back did not differentiate this case from the preceding.

Complaint dismissed.

Prouty, C., dissented, on the same grounds as in the former case, stating also that it was the duty of the Commission so to adjust these freight rates as to lead to the greatest economy in hauling the cotton crop and not to protect any one form of cotton compress.

427.—Marley v. Norfolk & Western R. Co., et al. 11 I. C. C. Rep. 616. (May 7, 1906.)

Demand for reparation on coal shipments at alleged unreasonable rates.

Complainant had shipped coal from Glen Alum, W. Va., to Alexandria, Ind., at defendant's regular rate of \$1.90 per ton at a time

when, over a somewhat shorter competing line, there was a rate of \$1.65 in force.

Held, (Knapp, Ch.), that although the rate over the shorter line was a proper subject of comparison, in determining the reasonableness of the rate in question, it was not conclusive, and the rate complained of appeared to be reasonable.

Complaint dismissed.

428.—*Texas & Pacific R. Co. v. Mugg*. 202 U. S. 242; 50 L. Ed. 1011; 26 S. Ct. 628. (May 4, 1906.)

Error to Court of Civil Appeal of Texas.

Suit for damages for refusal by railroad to deliver up freight on payment of charges specified in the bill of lading, these being less than the rates published and filed under the Act.

Held, (White, J.), that the rights both of the shipper and carrier as to rates were fixed by the rate filed and published, irrespective of the knowledge of the shipper as to this rate, and the consignee could become entitled to the goods only on payment of this rate.

Judgment reversed.

429.—*United States v. N. Y. Central & H. R. R. Co., et al.* 146 Fed. 298; C. C. S. D. N. Y. (July 6, 1906.)

Four indictments against a railroad, its agents, and the agents of certain shippers for receiving rebates under the Act of 1887 and the Elkins Act. (Four cases.)

The first indictment charged that the published freight rate on sugar from New York to Cleveland was 21c. per 100 pounds, and that the defendants entered into an agreement to allow a 6c. rebate on sugar shipped to Cleveland for reconsignment, and a 4c. rebate on that terminating at Cleveland, and that such rebate was paid by the defendant to the sugar company to the amount of \$26,141.81. It was not alleged that any other person had been charged a higher rate. In the second indictment it was alleged that the full rate was first paid and that thereafter \$920.39 was paid to one Palmer as the agent for the shippers "by way of rebate and concession in respect to the transportation of said sugars under said unlawful agreement," but there was no allegation of a willful failure to observe the published tariff. Defendants objected that the railroad and its agent could not properly be prosecuted for the same offence in a single indictment. The last indictment was against the agents of the railroad and of the shippers, and alleged a conspiracy under Sec. 5440 of the Revised Statutes to commit an offence against the United States, punishable by imprisonment. The offences charged were all committed prior to June 29, 1906.

Held, (Holt, D. J.), (a) that it was not necessary to show that someone else had been charged a higher rate in a case like the present, as the Act was violated by showing the payment of a rebate from the schedule rates, such being a deviation from the published

rate, and that *United States v. Hanley*, 71 Fed. 672, (202) was distinguishable as involving the question of unlawful discrimination;

(b) that the second indictment sufficiently alleged a willful failure to observe the published tariff;

(c) that a carrier and its agents might be properly prosecuted for the same offence in one indictment;

(d) that inasmuch as the Elkins Act had expressly abolished imprisonment as a penalty for offences committed under it, and as the acts complained of were such as necessarily required the co-operation of several persons, defendants could not be subjected to imprisonment by giving the same offence another name;

(e) that the provisions of the Act of June 29, 1906, were not retrospective.

Demurrer to the three indictments for giving and receiving rebates overruled, and demurrer to indictment for conspiracy sustained.

430-A.—*United States v. Chicago & Alton Ry. Co., et al.* 148 Fed. 646. D. C. N. D. Ill. (July 6, 1906.)

Indictment against a carrier, its vice president and general freight agent for granting rebates. Motion by defendant, after the Government closed, to direct a verdict of not guilty.

The Chicago & Alton was an interstate carrier, running east from Kansas City, Mo. The Belt Railway Co. operated a belt line from Kansas City, Kas., to Kansas City, Mo., connecting with the Chicago & Alton and with a private track of the Schwarzschild & Sulzberger Co., at Kansas City, the latter doing a packing business. The tariff of the Chicago & Alton stated that its rate east included the Belt Co.'s charge. The Chicago & Alton had collected from the S. & S. Co. its schedule rate, and prior to 1901 had remitted to the Belt Co. \$4 per car. The Belt Co.'s rate was \$3 per car, and that Company had thereupon paid the S. & S. Co. \$1 per car. After 1901, at the request of the S. & S. Co., the Chicago & Alton had paid to the Belt Co. \$3 per car, and to the S. & S. Co. \$1 per car. The defendants contended that the payment was for the use of the S. & S. Co.'s private track, and that if the law had been violated it was only in requiring the carrier to publish any terminal charge or regulation altering or determining the aggregate rate for transportation.

Held, (Landis, D. J.), (a) that the facts set out constituted a rebate;

(b) that the word "rate" in the Interstate Commerce Act means the net cost to the shipper of the transportation of his property, i. e., the net amount the carrier receives from the shipper and retains;

(c) (semble) that for a carrier to pay the consignor or consignee's bills for cartage of property between their warehouses and the depot, amounted to a rebate;

(d) "the object of the statutes relating to Interstate Commerce is to secure the transportation of persons and property by common carriers for reasonable compensation;"

(e) "no rate can possibly be reasonable that is higher than anybody else has to pay. Recognizing this obvious truth, the law requires the carrier to adhere to the published rate as an absolute standard of uniformity;"

(f) that publication of charges is required, not only that a shipper may know exactly what his own transportation may cost him, but also that he may know what it will cost his competitor.

Motion overruled.

430-B.—*Chicago & Alton Ry. Co. v. United States, Faithorn v. United States, Wann. v. United States.* 156 Fed. 558; 84 C. C. A. Rep. 324; C. C. A. 7th Circuit. (April 16, 1907.)

Error to D. C. N. C. Ill., on conviction of carrier, its vice president and general freight agent for giving rebates.

Under the pleadings it was admitted that the charge of \$1.00 for the use of the S. & S. tracks was a reasonable charge, and the only question was the legality of any charge.

Held, (Baker, C. J.), (a) that the fact that the arrangement between the Alton and the S. & S. Company was not published and filed with the Commission, was immaterial, since the "failure to publish could not make a rebate of what is not a rebate, and on the other hand, publication could not save what is a rebate from being found to be a rebate;"

(b) that the methods of bookkeeping and charging the payments in question, while perhaps relevant, were not conclusive, "As Courts rightly are keen to penetrate an innocent appearing device to reach an illegal transaction, they should also be alert to save a lawful act, though it be hid under a false cover;"

(c) "S. & S. received back a part of the money they paid the Alton for freight. That fact alone does not prove that the transaction constituted a rebate within the definition of the statute. A railroad may pay its lawful indebtedness to a shipper out of the money the shipper pays it for freight; or a shipper may pay the full freight partially in money and partially in cancelled legal demands against the railroad. The statute's definition of a rebate is any device whereby any property in interstate or foreign commerce is transported at a less rate than that published and filed. So if the full rate be paid either in money or in money's worth, the parties cannot be guilty of rebating;"

(d) that under the Act it was lawful for a railroad to pay a shipper for services done by a shipper in connection with transportation, but that as the railroad in this case had not leased tracks or cars of the shipper, and as the service in question was done entirely on the property of the S. & S. Company, and for its own purposes, any payment on account of such service was illegal;

(e) "Under the Cullom Act, the standard of comparison was the treatment of other shippers. It was necessary to prove not only that the favored shipper really paid less than the published rate, but also

that other shippers paid the full rate or a greater rate than that of the favored shipper. Under the Elkins Act the standard of comparison is the published rate. It is only necessary to prove that the favored shipper has had his property transported at a less rate than that published and filed."

Judgment affirmed.

Grosceup, C. J., concurring, "to secure equality among shippers, the law commands, not only that the rates shall be equal, but that they shall be fixed and certain—subject to no addition or diminution against, or in favor of, any one—so fixed and certain that any shipper can with his head and pencil figure out from the tariff sheets just what the rate is, both for himself and for his competitors."

Petition for rehearing overruled, per Curiam.

431.—Eaton v. Cincinnati, H. & D. Ry. Co. 11 I. C. C. Rep. 619.
(Aug. 3, 1906.)

Complaint of car discrimination against complainant in favor of his competitors, and demand for reparation.

Complainant, a hay and grain shipper, in September, October and November, 1905, received almost no cars, while his competitors, notably the McMillen Grain Co., who owned an elevator, received some sixty per month.

Held, (Clements, C.), (a) that there had been undue discrimination, and that \$200, the actual damages proved, would be awarded;

(b) that although more damages than this had probably been suffered, they were not accurately proved and could not be awarded.

Order accordingly.

432.—Weil Bros. v. Penna. R. Co., et al. 11 I. C. C. Rep. 627.
(Aug. 3, 1906.)

Complaint of unreasonable rate on wool from Philadelphia, Pa., to Ft. Wayne, Ind., and demand for reparation.

The west-bound wool rate charged complainant was 62c. per 100 pounds. It appeared that the east-bound rate was 43c., both for carload and less-than-carload shipments, but that there was much more wool going east, and that the wool in question was only a special lot, returned to complainant as defective.

Held, (Clements, C.), (a) that the east and west-bound rates need not be the same, since many things influenced the one and not the other, such as the amount shipped, quality, etc.;

(b) that there was no discrimination here proved.

Complaint dismissed.

433.—Farrar v. Southern Ry. Co., et al. 11 I. C. C. Rep. 632.
(Aug. 3, 1906.)

Complaint of unreasonable rates on lumber from Dalton, Ga., to Ohio points, of preference of Chattanooga, a less distant point, and demand for reparation.

Chattanooga was 40 miles northwest of Dalton. Until a short time before this decision it had a lumber rate to Ohio points 2c. per 100 pounds less than the Dalton rate, while the rate from the south to both places was the same. Recently, however, the Chattanooga rate had been raised to 2c. above the Dalton rate.

Held, (Clements, C.), (a) that the Dalton rate did not clearly appear to have been unreasonable in the past and certainly was not so since the change;

(b) that the evidence was not adequate to warrant an order for reparation.

Complaint dismissed.

434.—Farrar, et al. v. Southern Ry., et al. 11 I. C. C. Rep. 640. (Aug. 3, 1906.)

Complaint of unreasonable lumber rates from Dalton, Ga., to points between Bristol and Roanoke, Va., (the latter the more distant point), of preference of Roanoke over such points, of violation of Sec. 4, as to such points, and demand for reparation.

Rates to Roanoke were joint through rates but those to points between Roanoke and Bristol were the rates to Bristol with the local from Bristol added. This system of rates was the result of a recent change by the Southern Ry., which the other roads had followed. There was a strong competition at Roanoke and at Lynchburg (beyond Roanoke.)

Held, (Clements, C.), (a) that the difference in conditions justified an exception to Sec. 4;

(b) that rates to the intermediate points were, however, unreasonably high, to the extent of the recent advances;

(c) that the evidence as to damages was not clear enough for the Commission to base an order for reparation thereon.

Order accordingly.

435.—Davenport Bros. & Co. v. Southern Railway, et al. 11 I. C. C. Rep. 650. (Aug. 21, 1906.)

Complaint of preference in rates of Cordele and Fitzgerald, Ga., over Helena and McRae, Ga., less distant points on the same line from Ohio and Tennessee, and of violation of Sec. 4 with regard to such rates.

There was stronger competition at Cordele than at Helena and McRea, but that at Fitzgerald was not different. The defendant claimed that the Cordele rate having been reduced by order of the Commission (see 198), was not a fair basis of comparison.

Held, (Clements, C.), (a) that a rate reduced to a reasonable figure by order of the Commission, was an entirely just basis for comparison;

(b) that by reason of the competition at Cordele that rate might well be lower, but that the rates to Helena and McRea were unreasonable and should be no higher than those to Fitzgerald.

Order accordingly.

436.—Phillips Co. v. Grand T. W. Ry. Co., et al. 11 I. C. C. Rep. 659. (Aug. 21, 1906.)

Complaint of unreasonable east-bound rates on wire-screens, compared to those to west-bound, resulting in preference of eastern manufacturers.

The rate east from Michigan to Vermont was 36c. per 100 pounds, while that west was but 20c. West-bound rates were generally lower by reason of the greater number of empty cars west-bound, but the difference was not generally so marked as this case. Evidence was offered as to the relative cost of manufacture of wire-screens at the various points in question.

Held, (Clements, C.), (a) that while east-bound and west-bound rates need not be the same, the difference should be reasonable, and not greater on one article than on another, without reason;

(b) that relative cost of manufacture offered no ground to the carriers or to the Commission for the adjustment of rates, so as to equalize conditions at the respective points;

(c) that there was not here evidence sufficient to determine the exact change necessary, and the case would be held open to allow adjustment by the carriers with leave to complainant to proceed further.

437.—Menasha Wooden Ware Co. v. Atchison, T. & S. F. R. Co., et al. 11 I. C. C. Rep. 666. (Aug. 21, 1906.)

Complaint of unreasonable rate on wooden pails from Menasha, Wis., to North Pacific Coast points, and of preference of shippers from Tacoma, Wash., to such points, and to Missouri River points.

Complainant formerly shipped both to the Missouri River and to the Pacific Coast, but the establishment of a rival factory at Tacoma, which could manufacture pails cheaper than complainant, deprived him of the latter business. The rate to North Pacific Coast points was \$1.35 per 100 pounds. From such points to the Missouri River the class rate was \$1.25, but in order to encourage the Pacific Coast factory, the railroads had put in force special rates to some points of 80c., and to others of 65c. There were more empty cars west-bound than east-bound.

Held, (Clements, C.), that although usually the lower rate was in the direction of the empty cars, and although there here appeared to be undue discrimination against complainants, there was not sufficient evidence on which to base a specific order, and the case would, therefore, be left open in the belief that the roads would adjust rates so as to remove the undue discrimination.

438.—Hastings Malting Co. v. Chicago, M. & St. P. R. Co. 11 I. C. C. Rep. 675. (Aug. 23, 1906.)

Complaint of unreasonable coal rate from Superior, Wis., to Hastings, Minn., and preference of Afton, Minn.

The coal rates to Hastings from Duluth, Minn., and Superior, Wis.,

were on anthracite \$1.75, and on bituminous \$1.40, while those to Afton and points nearer by short line distance (but a more distant point by the Chicago, Milwaukee & St. Paul), were \$1.40 and \$1.05. The rates to St. Paul (also nearer than Hastings) were \$1.25 and 90c., but at St. Paul there was strong competition. Defendants alleged that the Afton rate was necessarily low because, under the Minnesota law, enforced by the State Commission, rates from Duluth, Minn., to intermediate points on the way to St. Paul, could not exceed the St. Paul rates, that the rate from Superior must be the same as that from Duluth, and that Afton, being nearer the line to St. Paul, got the benefit of the low rates enjoyed by points on that line.

Held, (Prouty, C.), (a) that the rates to Hastings were unreasonable and should not exceed \$1.50 and \$1.25;

(b) that since the Minnesota State Commission had full control of the rates from Duluth, and as the Commission had no power to fix rates, it would not now interfere, and no order should be issued;

(c) (semble) that it might often happen that a given rate, seemingly unreasonable when considered alone, was justifiable as part of an entire system of rates.

Complaint dismissed without prejudice.

439.—Goodhue v. Chicago, G. W. Ry. Co. 11 I. C. C. Rep. 683. (Aug. 23, 1906.)

Complaint of violation of Secs. 1, 2, 3 and 4 in grain rate from Goodhue, Minn., to Chicago, as compared to that from Red Wing, Minn., a more distant point.

The rate from Goodhue was 15c., while from Red Wing, 14 miles more distant, it was 12½c. At Red Wing, however, the Chicago, Milwaukee & St. Paul was a competitor for the traffic.

Held, (Prouty, C.), (a) that under the Federal decisions the railroad competition at the more distant point made the conditions dissimilar, and no violation of Secs. 2, 3 or 4 appeared;

(b) that there being no evidence as to the reasonableness of the Goodhue rate and the Minnesota Commission having adequate control of the situation, the complaint would be discussed without prejudice.

Followed in *Pine Island v. Chicago, G. W. R. Co.*, 11 I. C. C. Rep. 687 (1906.)

440.—Cutter v. Atchison, Topeka & Santa Fe R. Co., et al. 11 I. C. C. Rep. 689. (Aug. 25, 1906.)

Demand for reparation on account of unreasonable rate on beer from Milwaukee to Woodward, Okla.

From 1892 to 1899 the beer rate had been 53c. per 100 pounds, when it was raised to 73c. It so remained until 1902, when, by reason of new competition, it was lowered to 53c. To Oklahoma City, where there had been competition, the rate had remained at 53c. since 1893.

Held, (Cockrell, C.), that the 73c. rate was unreasonable, and that a reasonable rate was 53c.

Order allowing to complainants damages proved.

441.—**Knudsen-Ferguson Fruit Co. v. Mich. Central R. Co.** 148 Fed. 968; 79 C. C. A. Rep. 46; C. C. A. 8th Circuit. (Nov. 5, 1906.)

Action to recover alleged unreasonable refrigeration charges paid under protest.

Defendant's tariff showed a rate on second class freight from Matawan, Mich., to Duluth, Minn., of 48c. per hundred pounds. Grapes were rated in this class. The tariff stated that certain fruits, among them grapes, were subject to an additional charge for icing at a certain minimum rate, stated in another part of the schedule. Complainant paid on a certain shipment \$27 for icing grapes, and sued to recover this amount, with \$500 attorney fee. There was no proof that either the icing or the regular charge was unreasonable, or that any departure had been made from published rates, but the plaintiff contended that as icing was a necessary part of the transportation in question, it was necessarily included in the transportation rates.

Held, (Hook, C. J.), (a) that a reasonable charge for icing might be stated in a schedule separate from the rate for ordinary transportation, provided no part of one rate was covered by the other, and that the facts were clearly stated in the tariff;

(b) that even if the defendant had violated the Act by dividing its rate in the schedule, the plaintiff could not recover under Sec. 8, as under that section there must be a showing of some specific pecuniary injury and a cause of action did not arise merely from the act of the carrier subjecting it to criminal prosecution or corrective or coercive proceedings by the Commission. In order to recover a complainant must show either that there has been some unreasonable or excessive charge imposed, or some unlawful discrimination practiced against him.

Judgment affirmed.

444.—**Re Illinois Central R. R. Co.** 12 I. C. C. Rep. 7. (Nov. 16, 1906.)

Complaint of allowance of passes by other roads to land and immigration agents.

After the passage of the Hepburn Act the Illinois Central road had refused to allow such passes. Other roads continued them.

Held, (By the Commission), that the allowance of such passes was illegal both under the old law and under the Amendment of 1906, since such agents were not properly employees of the railroads.

445.—**Frederick Brick Works v. Northern Cent. Ry.** 12 I. C. C. Rep. 13. (Dec. 24, 1906.)

Demand for reparation for brick shipments from Frederick, Ind., to Elberton, N. J., at unreasonable rates.

In January, 1906, complainant had shipped bricks to Elberton, N. J., at \$3.80 per ton, the published rate. The usual method of determining rates to Elberton was by adding 5c. per 100 pounds, or \$1.00 per ton to the Jersey City rate, which in this case was \$1.25. On Dec. 5th, 1906, a \$2.25 brick rate was put in force by defendant to Elberton on this basis.

Held, (Clements, C.), (a) that \$2.75 was a reasonable rate;

(b) that damages at \$1.05 per ton be allowed on shipments made at the \$3.80 rate.

Order accordingly.

446.—Re Railroad and Telegraph Companies. 12 I. C. C. Rep. 10. (Dec. 21, 1906.)

Petition of certain railroads as regards the allowance of passes to employees of telegraph companies.

The roads desired to give passes to employees of telegraph companies allowing free travel and carriage of freight at reduced rates in connection with the construction and maintenance of telegraph lines along the roadbed of the railroad, and also for men and materials employed on the telegraph lines at points not on the roadbed. The roads had agreed with the telegraph companies, in return for free messages, to allow such transportation along the roadbed and also to points not on the roadbed.

Held, (By the Commission) (a) that it was proper to give passes or reduced rates for men and materials employed in connection with the railroad, and that such were proper as regards employees and materials working on or used in the construction and maintenance of the telegraph lines along the roadbed of the road allowing such passes or reduced rates;

(b) that the Act did not permit the allowance of passes or reduced rates to employees or materials employed "off the line" of the road giving the pass, even in return for free messages off the line.

Order accordingly.

447.—United States v. Standard Oil Co. 148 Fed. 719. D. C. N. D. Ill. (Jan. 3, 1907.)

Demurrer to indictment for obtaining transportation at less than published rates.

The offences were alleged to have been committed prior to June 29, 1906, and the indictments were returned August 27, 1906. Certain of the indictments were on the ground of the refund of storage charges to defendant as a consignee. Two of them (Nos. 3716 and 3722) alleged a common arrangement between certain carriers for the transportation of property between given points, that the lowest total rate for such transportation in the printed tariffs was 39½c. per hundred pounds, and that the product of the defendant was transported between such points for 25 9-10 per 100 pounds, but did not

allege there existed any joint through rate lower than the total of the locals. In answer to various contentions by defendants,

Held, (Landis, D. J.), (a) that the law not only prohibited rebates by direct methods and fraudulent devices, but equally prohibited a shipper from taking directly from the carrier a less rate than that specified in published tariff;

(b) that to require a shipper to adhere to a fixed published rate did not defeat the object of the Act to secure the transportation of property at reasonable rates;

(c) that where a railroad published and filed a schedule of rates on interstate shipments to points beyond its own line, the Act applied to rebates from such rates equally with those between points on its own line;

(d) that rebates from storage charges or from any of the other charges covered by the Act were illegal;

(e) that the law applied to consignees as well as to consignors;

(f) that although possibly the joint resolution of Congress of June 30, 1906, might operate to suspend the Act, it could not prevent its having become effective by the signature of the President, on June 29;

(g) that an indictment for violation of the Elkins law need not allege that the published rate was a reasonable one;

(h) that the repealing section in the Act of June 29, 1906, did not pardon offences committed prior to that date on which no indictment had been had, but that (under Sec. 13 of the revised statutes of 1871), Sec. 10 of the Act of June 29, 1906, preserved the procedure of the legislation prior to that date in the prosecution of all the offences committed prior thereto, such being the evident intention of the Act, in view of its history and the object of its passage;

(i) that indictments Nos. 3716 and 3722 were defective in that they did not negative the existence of a joint through rate lower than the total of the local rates alleged to have been departed from.

Demurrers to the two latter sustained, and to the two others overruled.

448.—Re Free Transportation of Newspaper Employees. 12 I. C. C. Rep. 15. (Jan. 21, 1907.)

Petition by certain newspapers and by the New York, New Haven & Hartford R. Co. requesting an opinion as to the legality of free transportation for caretakers for newspapers on special paper trains.

These persons, employees of the newspaper companies, sorted the various papers for the respective stations on the road, thus saving time. The regular paper rate was 50 cents per 100 pounds. They were also given free transportation on returning passenger trains.

Held, (Harlan, C.), (a) that the exception of certain enumerated

caretakers from the Act precluded the Commission from enlarging the excepted class by construction;

(b) that the persons in question could not legally be furnished with free transportation;

(c) that the Act did not permit the transportation of passengers at a commodity rate or vice versa, or the carriage of a mixed load of passengers and freight at a car rate.

449-A.—United States v. Camden Iron Works. 150 Fed. 214. D. C. E. D. Pa. (Jan. 24, 1907.)

Motion in arrest of judgment and for new trial on information charging defendant with having received a rebate in violation of the Elkins Act. (See also 423.)

The shipment relied on was from Philadelphia to Winnepeg via Phila. & Reading and Baltimore & Ohio to Erie or Buffalo, and from thereby the Mutual Transit Co., a water line, to West Superior or Duluth, and by the Great Northern Ry. Co. to Winnepeg. The information did not allege that the Mutual Transit Co. was "used under a common control management or arrangement for a continuous carriage, etc.," with the rail lines in question between the points specified, but there was evidence of its participation in the receipts from through business. The Mutual Transit Co. had never filed with the Commission any tariffs on this through business or filed its concurrence with those of other roads, and to establish the rate from which the alleged rebate was deducted, the Government relied solely on its participation in rates filed by the railroads.

Held, (Holland, D. J.), (a) that since this case did not involve an infamous offense punishable by imprisonment in the penitentiary, proceedings by information were proper;

(b) that the failure to allege use under common control, etc., was remedied by the evidence of participation in rates, etc.;

(c) that account sheets showing a settlement for the freight on these shipments were proper evidence to show that the Mutual Transit Co. was under a "common arrangement" with the railroads in handling this freight;

(d) that to prove the establishment of the rate on this freight, tariffs filed by the railroads were proper, though not concurred in by the Mutual Transit Co. by written memorandum filed with the Commission, or in any way except by participation in handling and sharing of charges for freight;

(e) that the information was not defective in stating the origin of the freight as Philadelphia, though the evidence showed that it was lightered by the railroads from Camden, N. J.;

(f) that under Sec. 1 of the Elkins Act participation in a rate filed was evidence not only against the carrier, but also against the shipper.

Motion overruled.

449-B.—Camden Iron Works v. United States. 158 Fed. 561. C.

C. A. 3rd Circuit. (Jan. 27, 1908.)

Appeal from conviction for receiving rebates.

Held, (Dallas, C. J.), (a) that although the penal provisions of the Elkins Act were to be construed so as to suppress the mischief against which they were directed, yet it was the duty of the Courts to see to it that no one should be held guilty of a crime thereunder on any interpretation of the Act which did not appear with reasonable certainty to be the correct one;

(b) that the test of what was a "common arrangement" applicable to connecting railroads did not control a case in which one of the participating carriers was an independent water line;

(c) that participation in rates filed by other carriers was not sufficient, as against shippers, to establish such as the legal rates.

Gray, J., concurred, (opinion.)

Judgment reversed.

Buffington, J., dissented, (opinion.)

450-A.—United States v. Chicago, St. P., M. & O. R. Co., et al.

(Ten cases.) 151 Fed. 84. D. C. Minn. 4th Div. (Jan. 26, 1907.)

Demurrer to indictments for giving and receiving rebates on shipments of grain.

The indictment did not allege a prior agreement to give the rebates, nor did it negative the existence of certain conditions which defendants argued, rendered the payments legal. The Acts complained of were done between 1903 and June 29, 1906, and as the cases were not pending at the latter date defendants contended that they could not now be prosecuted.

Held, (Morris, D. J.), (a) that an indictment under the Elkins Act need not allege a prior agreement nor facts properly set up in the defense;

(b) that the Act of June 29, 1906, did not effect the pardon of offenses committed prior thereto but not indicted;

(c) (semble) that "causes" in the repealing section of the Act of 1906, (Sec. 26), referred to civil causes only and the criminal ones were governed solely by Sec. 13 of the revised statutes of 1871.

Demurrers overruled.

Judge Loehren, who also sat, did not agree.

450-B.—Chicago, St. Paul, M. & O. R. Co., et al. v. United States.

162 Fed. 835. C. C. A. 8th Div. (May 25, 1908.)

In error to D. C. D. Minn.

In addition to the facts stated in the opinion of the Court below, the following facts appeared:

The shipments on which the rebates in question were given, were between Minneapolis, Minn., and Duluth, Minn., over a route which passed through some portion of the State of Wisconsin. Prior to

1903, the railroad company had transported grain on through bills of lading from Minneapolis to Buffalo, but finding that this was impracticable, had then shipped only to Duluth or Superior to specified consignees with a memorandum that the grain was destined for re-shipment. The defendant company found that by reason of competition with other lines, it was impossible to get any of this lake business unless it absorbed the elevator charges at Detroit. The published rate from Minneapolis to Duluth was 5c. per 100 pounds, but the defendants agreed with the Spencer Grain Co., as with all other shippers, that it would refund to such shippers $1\frac{1}{2}$ c. per bushel, this being the amount of the elevator charges. On the shipments in question, the Spencer Grain Co. had paid 5c. per 100 pounds, and there had been returned to it $1\frac{1}{2}$ c. per bushel. In returning such elevator charges, however, defendant had acted in entire good faith and had treated all shippers alike.

Held, (Adams, C. J.), (a) that the indictment contained all the elements of the offense charge since it alleged (1) the granting or giving of a rebate, (2) from the published and filed rates, (3) for the transportation of property, (4) by a carrier engaged in interstate commerce;

(b) that there need be no particular description of the device resorted to by the defendants to accomplish the unlawful transportation;

(c) that the fact that defendants treated all shippers alike would be relevant in a charge of discrimination, but in an indictment for departing from tariff rates, it was immaterial;

(d) that in such a case, no evil purpose was necessary, all that was required to constitute the offense being acts intelligently performed with knowledge of their consequence.

Judgment affirmed.

451-A.—Mottley v. Louisville & N. R. Co. 150 Fed. 406. C. C. N. D. Ky. (Feb. 2, 1907.)

Action to compel specific performance of contract by defendant to give passes to complainants for life.

In 1871 complainant and wife had been injured, and in consideration of releases had been promised free passes every year for their lives. On Jan. 1, 1907, defendants refused to continue to issue these beyond the boundaries of Kentucky.

Held, (Evans, D. J.), that the contract in question was not rendered invalid by the Act of 1906, which should be given a prospective operation.

Demurrer to bill overruled.

451-B.—Louisville & Nashville R. Co. v. Mottley. 211 U. S. 149. App. from C. C. W. D. Ky. (Nov. 16, 1908.)

Appeal from above.

Held, (Moody, J.), (a) that there was here no diversity of citizen-

ship and no suggestion of any ground of jurisdiction in the Federal Courts except that the case was a suit arising under the Constitution and laws of the United States;

(b) that these words conferred jurisdiction only when the plaintiff's statement of his own cause of action showed that it was based upon those laws or on that Constitution, and it was not enough that the plaintiff alleged some anticipated defense to his cause of action and asserted that the defense was invalidated by some provision of the Constitution of the United States;

(c) that it was the duty of the Supreme Court in such a case to see to it that the jurisdiction of the Circuit Court, which was defined and limited by statute, was not exceeded.

Judgment reversed and case remanded to Circuit Court with instructions to dismiss the suit for want of jurisdiction.

452.—*United States v. Delaware, L. & W. R. Co.* 152 Fed. 269. C. C. W. D. N. Y. (Feb. 14, 1907.)

Demurrer to indictment charging rebating on shipments of sugar from New York to Buffalo and points beyond, via New Jersey and Pennsylvania, between October, 1903, and February, 1905, indictment having been found in August, 1906.

The indictment alleged that defendant had made an agreement with Palmer, the transportation agent of the American Sugar Refining Co., whereby he should route the sugar over defendant's road, which should be paid the regular rate; that afterward Palmer should present claims as for extra lighterage. This, it was alleged, was done and Palmer was paid 1c. per 100 pounds by the defendant, all of which was a mere device by the parties to conceal the payment of rebates, no lighterage services having been performed.

Held, (Holt, D. J.), (a) that shipments from New York to Buffalo through other States were covered by the Act;

(b) that although the payment of commissions by a railroad to one for obtaining business for it might be legal and proper, such was not the meaning of the indictment, which sufficiently charged the giving of an illegal rebate;

(c) that it was immaterial whether a rebate was paid to a shipper or to someone else, the test by the statute being whether the carrier has transported the property at a less rate than that named in the tariff;

(d) that the offering and giving of a rebate, although each illegal under the statute, were each but different stages of the same offence, and to charge both in the same count did not render the indictment bad for duplicity;

(e) that the Hepburn Act did not repeal the Elkins Act as regards offenses committed prior to June 29, 1906, and indicted subsequently;

(f) that the word "knowingly" in the Hepburn Act was not applicable to this case.

Demurrer overruled.

453.—Cattle Raisers' Ass'n. of Texas v. Galveston, H. & S. A. R. Co., et al. 12 I. C. C. Rep. 20. (Feb. 23, 1907.)

Complaint of failure to establish through route and joint rate on beef cattle from points on the International & Great Northern R. Co. in Texas, to New Orleans, La.

The defendants had formerly operated a through route on cattle from San Antonio to New Orleans, at a joint rate of 45c. per 100 pounds. In October, 1906, they discontinued it because two of them could not agree on the division of the rate. Two carriers, necessary links to the through route, were not parties, but the others did not object. The route proposed was the only practicable through route.

Held, (Prouty, C.), (a) that the public interest required the re-establishment of this through route, and the old route would be put in force for the present;

(b) that the question of the division of the through rate would be left to the defendants unless they were unable to agree;

(c) that the omission of the other carriers, not being objected to, was immaterial.

Order accordingly.

453*.—Gulf, C. & S. F. R. Co. v. Texas. 204 U. S. 403; 27 Sup. Ct. 360; 51 L. Ed. 540. (Feb. 25, 1907.)

Error to Supreme Court of Texas, on judgment for extortion under Texas Statute for exacting rates higher than prescribed by the State Railroad Commission.

On December 23, 1901, the Hardin Grain Co., at Kansas City, Mo., offered to sell Saylor & Burnett, at Goldthwaite, Tex., two carloads of corn for delivery at Goldthwaite, and this offer was accepted by telegraph from Goldthwaite. The Hardin Co., on the following day, contracted with the Harroun Co., of Kansas City, for the purchase of this corn, to be delivered at Texarkana, Texas. The Harroun Co. had previously contracted for the delivery of two cars of corn to it at Texarkana. This corn had been shipped from Hudson, South Dakota, consigned to the vendors of the Harroun Co., at Texarkana, with the privilege of stopping at Kansas City for inspection and transfer. The corn had reached Kansas City on December 17th, and was in Kansas City in the process of sacking when the transactions between the Harroun Co. and the Hardin Co., and between the Hardin Co. and Saylor & Burnett were consummated. The Hardin Co. did not pay the freight to Texarkana. The corn arrived at Texarkana on January 7th, and was delivered to F. L. Atkins, the agent of the Harroun Grain Co. there. The Hardin Co. had arranged with the Harroun Co. to have Atkins reship the grain for the Hardin Co. to Goldthwaite, and after remaining five days at Texarkana, it was so

shipped over the Texas & Pacific and the Gulf, C. & S. F., without breakage of package. The only thing done by Atkins was to surrender the Kansas City Southern bill of lading, have the cars set over on the Texas & Pacific, and take out a bill of lading from the latter company. The rate prescribed by the Texas State Commission from Texarkana to Goldthwaite was less than the part of the regular interstate rate filed in accordance with the Act. The carrier insisted on collection of the latter sum, and the carrier was prosecuted for extortion in pursuance of the Texas Statute.

Held, (Brewer, J.), (a) that although the character of a shipment, whether local or interstate, is not changed by a transfer of title during transportation, and although the character of the shipment from Hudson to Texarkana was not affected by the contract at Kansas City for the sale of the corn during the transportation, this transportation ended at Texarkana. The carrier was under no obligation to carry it further and on reshipment at Texarkana, the corn began a new and independent journey, wholly within the State of Texas, and subject to the rates prescribed by the Texas Commission;

(b) that the fact that during the time of the original interstate transportation the Hardin Co. intended to reship the grain to a further destination did not render the subsequent transportation beyond Texarkana interstate or a part of the original haul;

(c) (semble) that a passenger might properly purchase a ticket to a point just beyond the border of a given state and although intending to go further, take advantage of intrastate rates by insisting on repurchase of another ticket for the transportation wholly within the latter state.

Judgment affirmed.

454.—*Texas & Pacific R. Co. v. Abilene Cotton Oil Co.* 204 U. S. 426; 51 L. Ed. 553; 27 S. Ct. Rep. 350. (Feb. 25, 1907.)

Error to Court of Civil Appeal of Texas.

Action to recover alleged overcharge above reasonable rate on oil shipments, the rate charged being that published and filed with the Commission and the shipments being interstate.

Held, (White, J.), (a) that the Commission alone had power to entertain original proceedings for the alteration of an established schedule;

(b) (semble) that the only remedy for damage on a charge of an alleged unreasonable rate, such being the rate published and filed, was before the Commission;

(c) that Sec. 22 did not preserve the common law remedy for damages for charging an unreasonable rate in cases where rates had been filed and published in accordance with the Act.

Judgment reversed.

454*.—*Texas & Pacific R. Co. v. Cisco Oil Mill.* 204 U. S. 449; 51 L. Ed. 562; 27 S. Ct. Rep. 350. (Feb. 25, 1907.)

Error to Court of Civil Appeal of Texas.

It did not appear that the schedules had been posted in two public places in every depot as required by Sec. 6, though they had been filed with the Commission and copies sent to the agents at Cisco and other places.

Held, (White, J.), that the filing the rate with the Commission and furnishing copies to the agents uncontrovertably evidenced that it had been established, the posting being required merely to inform the public what rates had been established.

Judgment reversed.

455.—*Michie v. New York, N. H. & H. R. Co.* 151 Fed. 694. C. C. D. Mass. (Feb. 26, 1907.)

Action for damages for alleged unreasonable demurrage charge on hay at Forest Hills, Mass., and preference of South Boston.

The demurrage charge was \$1.00 per day after 96 hours, not counting Sundays and holidays or rainy days. Railroads paid one another 25c. or 20c. per day for cars (but \$1.00 after 30 days.) At South Boston defendant had a hay shed, where it stored hay for 5 days for \$1.00. When this shed was full it allowed shippers to leave it on cars there at the same rate. At Charlestown there was the same privilege as at South Boston, and 10 days' storage was allowed for \$1.00.

Held, (Lowell, C. J.), (a) that the charge was not shown to be unreasonable;

(b) that Sec. 3 did not prevent a railroad from providing better facilities at an important terminal than at a smaller one, and there was here no violation shown;

(c) that if there was a discrimination in favor of Charlestown against South Boston, there was none at either point against complainant.

Judgment for defendant.

456.—*Blackwell Milling & Elevator Co. v. Missouri, K. & T. R. Co.* 12 I. C. C. Rep. 23. (March 7, 1907.)

Complaint of exaction of unreasonable arbitrary on flour and grain shipments coming from connecting lines, and demand for reparation.

Defendant, at the time of complaint, had on file a tariff on grain and flour between points in Indiana and Oklahoma Territories whereby when these articles came from connecting lines, a 5c. arbitrary was charged in addition to the regular local rates. This was for the purpose of protecting the mills on its own line. While the case was pending defendant filed a new tariff, discontinuing the arbitrary, but in its answer sought to justify it.

Held, (Prouty, C.), (a) that prior to the amendment of 1906 the Act applied to shipments between two territories;

(b) that it was seldom that a railroad would be permitted to charge more on its through business than its regular local rate for the same distance;

- (c) that the exaction of the arbitrary was unreasonable;
(d) that in view of the answer of respondent defendant would be ordered to refrain from putting it in force again for two years.
Order accordingly and reparation awarded.

457.—Ponca City Milling Co. v. Missouri, K. & T. Ry. Co. 12 I. C. C. Rep. 26. (March 7, 1907.)

This case involved facts similar to those in Blackwell Milling, etc., Co. v. Missouri, Kansas & T. Ry. Co., (456), except that a part of the reparation asked was on account of shipments wholly within the Territory of Oklahoma prior to the Amendment of 1906.

Held, (Prouty, C.), that prior to this Amendment the Commission had no jurisdiction over such a shipment.

Reparation as to intra-territorial shipments denied, order otherwise like that in case referred to.

458.—Birmingham Packing Co. v. Tex. & Pac. R. Co., et al. 12 I. C. C. Rep. 29. (March 7, 1907.)

Complaint of failure to establish through route and joint rate on beef cattle from Fort Worth, Texas, to Birmingham, Ala.

There existed a joint through route and rate on packing house products between the points in question, but not on live cattle. There were slaughter houses at Fort Worth, but live cattle were frequently taken from Texas points 700 or 800 miles to be slaughtered. If the rates in question were established, it would be necessary to stop and feed the cattle en route under the Federal 28-hour law. Defendants made no objections to the joint rate of 50c. per 100 pounds if the route be established.

Held, (Prouty, C.), that a through route would be ordered with a joint rate of 50c.

Order accordingly.

The carriers having failed to come to an agreement as to the proper divisions of the through rate above ordered, the case was again heard in the fall of 1907, and the Commission in a supplemental report, 12 I. C. C. Rep. 500, fixed this division on the mileage basis, stating, however, that this decision was based on the peculiar facts of this case and must not be taken as establishing a general rule.

459.—American National Live Stock Ass'n., et al. v. Texas & Pac. R. Co., et al. 12 I. C. C. Rep. 32. (March 7, 1907.)

Complaint of failure to establish through route and joint rate from Texas and New Mexico points to northern points.

There had been formerly a through route and rate in force between these points, but it had been discontinued by the Tex. & Pac. R. Co., in order to keep its cars on its line. This road alleged that its connections did not furnish it with cars for the through traffic in exchange for those which this traffic took off its own line.

Held, (Prouty, C.), (a) that the public interest required the restora-

tion of the through route with the through rates formerly existing;

(b) *quaere* as to whether the Commission had power to require connecting lines to give to an initial road cars to make up for those sent off its line under a through route; no order on this point being deemed necessary in the present proceeding.

Order suspended for 30 days to enable the parties to adjust the matter voluntarily.

460.—Durham v. Illinois Cent. R. Co. 12 I. C. C. Rep. 37. (March 7, 1907.)

Complaint of unreasonable rate on brick machinery from Lochland, Ky., to East St. Louis, Ill., compared to lower rate from Louisville, Ky., a more distant point on the same line.

The rate in question was 21c. per 100 pounds, while that in Louisville, 8 miles less distant, was 15c. The rate from Louisville was fixed under competition by rail and water, and the Lochland rate was made by adding the local rate from Lochland to Louisville.

Held, (Prouty, C.), (a) that in view of the competition, the rate from Lochland was not unreasonable.

(b) that although the Commission had several times suggested that under such circumstances the full local rate ought not to be added, this case did not seem to call for consideration of this phase of the matter.

Complaint dismissed.

461.—Re Exchange of Free Transportation with Local Transfer and Baggage Express Companies. 12 I. C. C. Rep. 39. (March 25, 1907.)

Petition of Transfer Co. as to whether it might lawfully exchange free transportation with officers of railroad companies.

The Parmelee Co., the petitioner, was engaged in transporting passengers and their baggage from the railroad stations in Chicago to residences and hotels and from one railroad station to another.

Held, (Harlan, C.), (a) that although the petitioner was a common carrier, it was not one of the common carriers subject to the Act;

(b) that only the carriers subject to the Act were entitled to receive free transportation from railroad companies;

(c) that although the petitioner might allow free transportation over its line, its officers could not legally accept such from railroad companies.

462.—Johnston-Larimer Co., et al. v. Atchison, Topeka & Santa Fe R. Co. 12 I. C. C. Rep. 47. (March 25, 1907.)

Complaint of preference of Kansas City, St. Louis, Omaha and Chicago over Wichita, Kansas, in rates on cotton goods from Texas.

The rate to Wichita was 96c., and that to Kansas City, etc., was 50 and 55c., although these points were from 150 to 500 miles more

distant. Four railroads ran to Wichita, but the competition there had always been suppressed by agreement among the carriers.

Held, (Prouty, C.), (a) that the Wichita rate was unreasonable and should be reduced to 50c.

Order accordingly.

Motion for re-hearing denied. 13 I. C. C. Rep. 188. June 10, 1907.

463.—*Johnston-Larimer Dry Goods Co. v. Wabash R. Co., et al.* 12 I. C. C. Rep. 51. (March 25, 1907.)

Complaint of rates on cotton goods from East St. Louis, Ill., to Kansas City, Mo., and to Wichita, Kas.

The real question involved was the differential in rates from eastern markets to Kansas City and Wichita, but the proper carriers were not joined to enable the Commission to pass on these rates, nor did it appear that a decision in favor of the complainant would really benefit the complainant, by reason of the complicated rates.

Held, (Prouty, C.), that the complaint would be dismissed without prejudice.

464.—*Johnston-Larimer Dry Goods Co. v. New York & Texas S. S. Co., et al.* 12 I. C. C. Rep. 58. (March 25, 1907.)

Complaint of unreasonable rate to Wichita, and of preference of Topeka, Kas., over Wichita, Kas., on knit goods from New York and vicinity via water and rail through Galveston, Tex.

The rate in question was \$1.61½ per 100 pounds, while that to Topeka through Wichita was \$1.31, although Topeka was 189 miles beyond. At Topeka, however, there was stronger competition by direct rail routes, which accounted for the difference in rate.

Held, (Prouty, C.), that in view of the competition, the preference was not undue.

Complaint dismissed.

465.—*Mason v. Chicago, R. I. & Pac. R. Co.* 12 I. C. C. Rep. 61. (March 25, 1907.)

Petition by shipper of hay and farm produce asking that the Commission compel defendant to establish a rule or regulation for reciprocal demurrage, and that defendant be required to produce numerous books, correspondence, etc.

Held, (Clark, C.), (a) that the Commission had no authority to fix rules and regulations governing reciprocal demurrage;

(b) that the application to produce books and papers was too broad and would be denied.

Complaint withdrawn.

466.—*Omaha Grain Exchange v. Union Pac. R. Co.* 12 I. C. C. Rep. 65. (March 25, 1907.)

Complaint of unreasonable rate on grain in carloads from Council Bluffs, Iowa, to Omaha and South Omaha, Neb.

The rate in question was about \$5.00 per car, while that from Omaha to Council Bluffs was but \$2.00 per car. The latter rate was put in force to induce the construction of a large elevator on defendant's tracks at Council Bluffs. Where grain was to be delivered on the tracks of other carriers at Council Bluffs, a higher rate was charged. The defendant was obliged to pay switching charges to other carriers in Omaha on shipment from Council Bluffs.

Held, (Clark, C.), that, in view of all the facts, the rate was not unreasonable or discriminatory.

Complaint dismissed.

467.—Texas Cement Plaster Co. v. St. Louis & S. F. R. Co., et al.
12 I. C. C. Rep. 68. (March 25, 1907.)

Complaint of discrimination against cement shippers from Quanah, Tex., to St. Louis and Kansas City, Mo., in favor of shippers from Cement, Okla., to the same points, and demand for reparation.

The rates on cement to the two points from Quanah were 18c. and 13c. for distances of 728 and 571 miles, while from Cement they were 10c. and 8c. for distances of 602 and 445 miles, traffic from Quanah passing by Cement. The low rates from Cement had been established to meet competition from eastern points and cement could be hauled from Quanah at a continuation of the rate from Cement with a profit to the railroads. The line from Quanah to Cement was a distinct corporation, but under the same management.

Held, (Prouty, C.), (a) that defendants could not thus arbitrarily place Cement on a basis to compete at St. Louis and Kansas City, without giving Quanah corresponding rates;

(b) that the local rates from Cement were properly compared to the joint rates from Quanah (defendants being under a common control.)

Order that rates from Quanah shall not exceed 10½c. to Kansas City, and 12c. to St. Louis, while those from Cement are 8c. and 10c. or a stated per cent, and reparation ordered.

468.—United States v. Vacuum Oil Co. 153 Fed. 598. (March 29, 1907.)

United States v. Standard Oil Co. of New York. (Two Cases.) D. C. W. D. N. Y.

Demurrers to indictments charging defendants with receiving rebates and concessions from published rates on petroleum between Olean, N. Y., and points in Vermont.

The indictment alleged that the Pennsylvania R. R. Co., having published and filed a 19c. rate on petroleum from Olean to Rutland, Vt., with certain connecting lines, transported petroleum for defendants at a less rate between these points. Certain technical objections were made to the form of the indictments. One indictment (the Burlington) charged the knowing receipt of an unjust discrimination, in violation of the Elkins Act, in accepting the transpor-

tation of petroleum from Olean to Burlington, Vt., at 17 8-10c. per 100 pounds (which rate the indictment did not allege had been filed) while shippers from localities somewhat more distant in the same region could not obtain the service for less than 33c., all of which defendants knew.

Held, (Hazel D. J.), (a) that where an initial carrier became a party to and filed a joint through rate between given points, it could not lawfully charge nor could a shipper lawfully accept, a lower rate (not filed) between the same points by a different route;

(b) that the indictments were not defective in failing to allege that the rates charged were not the sum of the locals duly published and filed, or that the conditions of shipment in case of these shipments were not different from those contemplated in the schedule filed, these being matters of defense;

(c) that it was not necessary to allege that any shipper had ever actually paid the higher rate filed;

(d) that the Burlington indictment properly showed an unjust discrimination under Sec. 2, and not merely an undue preference of certain localities;

(e) that as regards the last indictment, alleging the acceptance of discrimination, it was immaterial whether the rate charged was filed or not.

Demurrer overruled.

469.—*Johnston v. St. Louis & San Francisco R. Co., et al.* 12 L. C. C. Rep. 73. (April 3, 1907.)

Complaint of unreasonable rates on coal from various points in Indian Territory to points in Oklahoma, and demand for reparation.

Certain of the rates were unreasonable and reduced, but the majority were held not to be excessive. The Commission regarded the case as unimportant, in view of the prospective admission of Oklahoma as a State and of the consequent withdrawal of these rates from its jurisdiction.

470.—*United States v. Pennsylvania R. Co.* 153 Fed. 625. D. C. W. D. N. Y. (April 4, 1907.)

Demurrer to indictment for deviation from joint tariff rates filed on petroleum between Olean, N. Y., to Rutland, Vt., and for failure to publish and file rates charged for such traffic between such points, over a route other than that covered by the tariff filed.

The Government alleged a tariff filed, showing a given rate on petroleum between Olean, N. Y., and Rutland, Vt., by a given route, and the allowance to certain shippers of a less rate via another route. Defendant contended that the indictment did not properly allege a common arrangement for a joint tariff, or a failure to publish and file the rates charged over the new route.

Held, (Hazel, D. J.), (a) that in an indictment for charging less

than a joint rate filed, the burden of showing a common arrangement for a continuous carriage between the points specified in the joint tariff was on the Government;

(b) that the successive receipt, etc., of freight was sufficient to constitute a common arrangement and the allegation of a filing by defendant of rates over other lines and transportation by all under such rates was sufficient, without a specific allegation of express concurrence by each in the filing of such rates;

(c) that although several legal rates might be filed by a carrier between two points by different routes, it was not necessary in this case for the indictment to allege that the rate actually charged over a route other than that over which a higher rate was filed, was not also filed;

(d) that a departure from a tariff filed over the first route, and a wilful failure to file that over the second were both sufficiently charged.

Demurrer overruled.

471.—**United States v. New York Cent. & H. R. Co.** 153 Fed. 630. D. C. W. D. N. Y. (April 4, 1907.)

Demurrer to indictment for knowingly failing to file petroleum rates established under a common arrangement with certain other railroads between Rochester and Norwood, N. Y.

The indictment set out facts showing interstate shipments of petroleum forwarded by continuous shipment via defendant's line, but not on through bills of lading. It was not alleged that none of the other participants had filed copies of these joint tariffs.

Held, (Hazel, D. J.), (a) that the indictment sufficiently alleged a common arrangement for through shipment under a joint tariff which it was defendant's duty to file;

(b) that it was not necessary for the indictment to allege that none of the other participants filed copies of these tariffs;

(c) that under the revised statutes, Sec. 13 (U. S. Comp. St. 1901, p. 6) the saving clause in the Hepburn Act (Sec. 10) did not repeal the Elkins Act as regards an offense committed, but not indicted prior to the passage of the Hepburn Act;

(d) (semble) that the Act imposed on each of the participants in a joint through rate the duty of filing copies of their tariffs.

Demurrer overruled.

472.—**Van Camp Burial Vault Co. v. Chicago, Ind. & Louis. Ry. Co., et al.** 12 I. C. C. Rep. 79. (April 9, 1907.)

Complaint of unreasonable rate and classification of cement burial vaults in less than carloads.

These vaults were classified as second class with iron burial vaults, although the cement vaults were four times as heavy and occupied but little more space. The value of the cement vaults was much less than that of the iron ones. In carload shipments, the cement vaults were fifth class and the iron ones third class.

Held, (Harlan, C.), that cement vaults in less than carloads should be classified as third class.

Order accordingly.

474.—*Re Party Rate Tickets*. 12 I. C. C. Rep. 95. (April 8, 1907.)

Voluntary expression of Commission's position as to legality of restricting such tickets to certain classes.

After the Commission in *Pittsburg, Cincinnati & St. Louis R. Co. v. Balto. & Ohio R. Co.*, (91-A), expressed the opinion that party rate tickets must be open to the public and could not be confined to amusement companies, argument was had before it but no public announcement made that it still adhered to its original conclusions. A number of carriers filed tariffs confining these tickets to amusement companies.

Held, (Prouty, C.), (a) that party rate tickets could not properly be limited to particular classes of persons, dependent on their vocation or on the object of their journey, but must be open to the public generally.

This decision was based on the construction of Sec. 2 in *Wight v. U. S.* (223.) The decision in *U. S. v. C. & N. W. R. Co.* (332), was distinguished as depending on cost of carriage (Government tickets being unlimited and not paid for in advance) and as relying on dicta in the Party Rule Case (91-C), which had been modified by the decision in *Wight v. U. S.*

Harlan, C., and Knapp, Ch., dissented, holding that party rates to amusement companies stimulated other traffic and such parties travelled as a unit while other parties which were usually collected by scalpers, did not.

475.—*United States v. Baltimore & Ohio R. Co.* 153 Fed. 997. D. C. N. D. W. Va. (April 19, 1907.)

Demurrer to indictment for discrimination, preference, etc., in refusal of switch connections and of quota of cars to certain coal companies.

As to the switch connections, the indictment, although stating that such were allowed to other companies similarly situated, did not allege that those refused were reasonably practicable to put in, or would furnish sufficient business to justify them, or that the shipper desiring them had offered to pay the usual proportion of their cost. As to the car discrimination, the indictment did not allege what was the proper share of cars for the complaining company to receive, or what share it did receive, or that such company was prepared to make shipments and tendered the same for shipment in interstate commerce.

Held, (Goff, D. J.), (a) that all the foregoing were material defects in the indictment;

(b) (semble) that defendant was not liable to criminal prosecu-

tion for the refusal of a switch connection even where this was a discrimination.

Demurrers sustained.

476-A.—Armour Packing Co., et al. v. United States. 153 Fed.

1. 82 C. C. A. 135. C. C. A. 8th Circuit. (April 29, 1907.)

Error to D. C. W. D. Mo. on judgment on conviction of receiving rebates in violation of the Elkins Act, as regards shipments of oil from Kansas City to Christiana, Norway.

On June 17th, 1905, the Chicago, Burlington & Quincy R. Co. had contracted with defendants to carry for them until Dec. 31, 1905, products of the character shipped, for export, at the rate then published and filed, the proportional part of which from the Mississippi River to New York was 23c. per 100 pounds. On Aug. 6, 1905, the C., B. & Q. R. Co. and its connecting lines published and filed an amended rate, the proportioned part of which, from the river to New York was 35c. per 100 pounds. On Aug. 17, 1905, the railroad shipped certain oil for defendants under the contract of June 17, 1905, from Kansas City via New York to Christiana, Norway, at 52 93-100c. per 100 pounds, knowing that the ocean rate was 19 93-100c., knowing also of the 35c. rate from the Mississippi River to New York previously filed. This traffic was carried at the agreed rate. Defendant did not know how the rate was apportioned among the connecting lines. Defendants contended that because there was neither charged nor proved any concession from that part of the rate filed and published which was proportionate to the carriage through the western district of Missouri, that Court was without jurisdiction and the crime complete only in the district of Kansas.

Held, (Sanborn, C. J.), (a) that although if the offense charged had been committed only in the Kansas District a provision of the Act giving jurisdiction to another District Court would be unconstitutional, yet in this case the gist of the offense was the obtaining transportation at less than the published rate, which was a continuing offense, occurring in every district through which the transportation passed;

(b) that transportation might not be necessary to render a shipper liable under the clause in the forbidding the receiving of "any other advantage, etc.;"

(c) that the Elkins Act covered a rebate from a through rate on a shipment under a through bill of lading from a place in the United States to a point in a foreign country;

(d) that if traffic to or from a foreign country was carried at an aggregate through rate which was the sum of the ocean and inland rates, the latter only should be published;

(e) that if it was carried at a joint through rate by virtue of a common control, management or arrangement among the inland and ocean carriers, the joint rate must be filed and published;

(f) that the present application of the Act did not produce a burden on exports or give a preference to the ports of certain states, forbidden by Art. I, Sec. 9, par. 5, of the U. S. Constitution;

(g) that although under the Amendment of 1889 forbidding false billing, etc., a fraudulent device was the substance of the offense forbidden, this was not so with reference to the Elkins Act, to violate which no device of any kind was necessary;

(h) that the meaning of "by any device whatever" in the Elkins Act was "directly or indirectly in any way whatever;"

(i) that a contract to transport at a given rate was no defense to a prosecution for receiving the contract rate after a higher rate had been legally filed and published by the carrier, as the existence of the Elkins Act at the date of the contract read into the contract, a proviso limiting the agreed rate to the period when it continued as the rate legally filed;

(j) that no further criminal intent was necessary in order to constitute the offense charged than the knowing receipt of less than the published rate; and the honest belief that the contract entitled defendant to pay the contract rate was no defense.

Judgment affirmed.

476-B.—Armour Packing Co., et al., v. U. S. 209 U. S. 56; 52 L. Ed. 428; 28 Sup. Ct. 428; Cert. to C. C. A. 8th Circuit. (March 16, 1908.)

Held, (Day, J.), (a) that under the Elkins Act no fraudulent conduct, bad faith or underhanded methods were essential as part of the "device" prohibited, since "the Act seeks to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given or received;"

"The Elkins Act proceeded upon broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions should be the one established, published and posted as required by law. It is not so much the particular form by which or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to, to obtain or receive concessions and rebates from the fixed rates, duly posted and published."

(b) that although certain other offenses prohibited by the Elkins Act might be completed and prosecuted in a single district, yet the crime here involved might be prosecuted in any district through which the transportation might have been conducted;

(c) that this construction did not bring the Act in violation of the 6th Amendment of the Constitution;

(d) that the Act applied to through shipments to foreign countries not adjacent to the United States;

(e) that so applied it did not lay a duty on exports or subject the ports of one State to a preference over those of another;

(f) that although the present construction of the Act might render it impossible for shippers to make valid contracts for future rates, this hardship was one for the consideration of the legislative and not of the judicial branch of the Government;

(g) that the indictment sufficiently set out the necessary elements of the offense charged;

(h) that no moral turpitude was necessary for the Commission of the offense charged.

Judgment affirmed.

Brewer, J., (with whom concurred the Chief Justice and Mr. Justice Peckham) dissented, holding that the contract between defendant and the railroad inhibited the latter from raising its rates in violation thereof and fixed the contract rate for all shippers, and also that the District Court for the Western District of Missouri had no jurisdiction, the crime having been completed in Kansas, the point of shipment.

477.—Atchison, Kas. City Councils v. Missouri Pac. R. Co., et al.
12 I. C. C. Rep. 111. (April 29, 1907.)

Complaint of preference of Kansas City, Mo., Argentine, Leavenworth and Kansas City, Kas., over Atchison, Kas., in the allowance of free service in elevating, cleaning and handling grain at such points and not at Atchison.

Atchison was grouped with the other points, above named, at which defendants owned or controlled elevators. The allowance of the privileges in question to the competitive points was a considerable detriment to Atchison shippers.

Held, (Clark, C.), that the facts presented an unlawful preference against Atchison which should be discontinued.

Order accordingly.

Rehearing denied June 28, 1907; 12 I. C. C. Rep. 254.

478.—Preston & Davis v. Delaware, L. & W. R. Co. 12 I. C. C. Rep. 115. (April 26, 1907.)

Complaint of discontinuance of delivery of oil in tank cars to complainants at defendant's Brooklyn terminal.

This practice had been in operation for a number of years, complainants being the only shippers using it. On October 15, 1906, defendant discontinued it on account of risk from fire. This gave the Standard Oil Company a monopoly with its pipe line.

Held, (Knapp, Ch.), that although the risk from fire was considerable, it was not so great as to warrant the fostering of a monopoly, and could be sufficiently guarded against by establishing suitable rules.

Order that defendant abstain from enforcing the regulation discontinuing the practice in question.

Motion for preliminary injunction to restrain enforcement of this order was denied, pending a hearing on the merits. 155 Fed. 512.

479.—Society American Florists, etc. v. United States Express Co.
12 I. C. C. Rep. 120. (May 1, 1907.)

Complaint of unreasonable rates on cut flowers from New Jersey and Pennsylvania points to New York City, and demand for reparation.

In May, 1906, the rate on flowers and on the return of empty boxes was increased from 33½ to 100% over the rates in force prior to that date. Defendant attempted to justify the increase by showing extraordinary expenses in connection with the delivery of flowers in New York. Its contracts with the railroad companies and delivering agents allowed to both a percentage of gross receipts, and although it did not appear that the remuneration to either had been unreasonable prior to the increase in rates, it was necessary that this increase be considerable, in order that the net share of defendant be sufficient to cover the increased expenses referred to.

Held, (Lane, C.), that admitting that some increase of rate was proper, defendant could not justify an increase over the amount of the additional expense to which it was subjected because of such arrangements as those in question.

Order that rates be fixed at figures named, higher than those previously in force but lower than those complained of. Question of reparation held in abeyance.

480.—Enterprise Mfg. Co., et al. v. Georgia R. Co., et al. 12 I. C. C. Rep. 130. (May 1, 1907.)

Complaint of unreasonable rates on cotton goods and cotton waste from Georgia and South Carolina points to Pacific Coast terminals.

The complainants relied on the fact that the rates from the New England mills were lower, and on the fact that a similar lower rate had been in force 10 years before. The New England rate, however, was the result of water competition and of market competition against the southern mills, which could produce the articles more cheaply. The conditions existing at the time the lower rate had been in force, were not shown.

Held, (Lane, C.), that the rates did not appear unjust, unreasonable or discriminatory.

Complaint dismissed.

481.—Tomlin-Harris Machine Co. v. Louisville & N. R. Co., et al.
12 I. C. C. Rep. 133. (May 1, 1907.)

Complaint of unreasonable and discriminatory rates on coal and pig-iron from Birmingham, Ala., to Cordele, Ga., and preference of Macon, Ga.

The rates to Cordele on both coal and iron were \$1.75 per short ton and \$2.75 per long ton; and to Macon, \$1.60 per short ton and \$1.65 per long ton. By short line, the two points were about equally distant, but the competition at Macon was stronger.

Held, (Lane, C.), that the coal rates were not unreasonable, but

that the \$2.75 rate per long ton on iron to Cordele was unreasonable and should be reduced to \$2.15.

Order accordingly.

482.—*Wilhoit v. Missouri, Kas. & T. Ry. Co.* 12 I. C. C. Rep. 137. (May 6, 1907.)

Complaint of unreasonable rate on oil from Erie, Kas., to Joplin, Mo., as compared with that to St. Louis, Mo., and of preference of St. Louis thereby.

The rate to Joplin was 15c. and that to St. Louis 17c. Joplin was but 69 miles distant from Erie and St. Louis 400 miles, but Joplin took the same rate accorded the surrounding points, the rates in this region being so adjusted as to give shippers an equal chance in the market.

Held, (Clark, C.), (a) that "although distance is somewhat of a factor in determining the reasonableness of a rate, yet to permit it to be a sole or controlling factor would be to introduce discrimination, which would create chaotic commercial conditions under which irreparable injury would be done to individuals, firms and communities without any compensating good resulting to the people or the commerce of the country as a whole;"

(b) that the rate and rate relation in question did not appear unreasonable, the Joplin rate having recently been reduced 2c.

Complaint dismissed.

483.—*American Grass Twine Co. v. Chicago, St. P., M. & O. R. Co.*, et al. 12 I. C. C. Rep. 141. (May 6, 1907.)

Demand for reparation for excessive rate on grass twine, matting, and rugs from St. Paul, Minn., to Boston, Mass., via Duluth.

The shipment in question was made just before lake navigation had opened, but before the lake and rail rates through Duluth had become effective. At this time, however, the lake and rail rates through Chicago and Milwaukee had already been established and the shipment might have moved through these ports on local rates that would have yielded an aggregate for the through movement of 45c. per 100 pounds. The rate charged was a combination of local rates, aggregating 62c. per 100 pounds. Defendants practically admitted that the 45c. rate was a fair test of what should have been charged. In a division of the through rates, it appeared that the New York Central and Boston & Maine roads received a fixed proportion at all times, the shrinkage in through rates for the lake-shipping season being participated in only by the Chicago, St. P., M. & O. R. Co., and by the Mutual Transit Co.

Held, (Harlan, C.), (a) that defendant should be awarded reparation based on the difference between the 45c. and 62c. rate;

(b) that 15c. of this amount should be assessed against the Chicago, St. Paul, Minneapolis & Omaha R. Co., and 2c. against the Mutual Transit Co. As to the other two complainants, the complaint would be dismissed.

484.—*Jones, et al. v. St. Louis & San Fran. R. Co.* 12 I. C. C. Rep. 144. (May 13, 1907.)

Complaint asking for the re-establishment of station facilities at Chase, Indian Territory, and demand for reparation for damages alleged to have been sustained by the removal of said station.

In the fall of 1905, defendant had moved its station at Chase $3\frac{1}{2}$ miles west to another point also called Chase, at a junction with another carrier. Old Chase was a town of but half a dozen houses, with a population of but three to four hundred within 4 miles, and the passenger and freight receipts were small. Other conditions rendered a station at old Chase impracticable, while most of the persons using the old Chase station were as well accommodated at the new locality.

Held, (Harlan, C.), (a) that without passing on the power of the Commission to order defendants to put in station facilities, this clearly would not be done unless the public interest demanded it;

(b) that the public interest did not require the granting of the relief asked in the present case;

(c) that defendants having properly removed the station, no damages could be awarded on account of such action.

Complaint dismissed.

487.—*Clement v. Louisville & N. R. Co.* 153 Fed. 979. C. C. E. D. La., N. O. Div. (May 16, 1907.)

Action for damages for alleged discrimination in favor of through shippers over local in exacting car-service charges from the latter and not from the former.

From the petition the Court held that it appeared that the charges exacted, both from local and from through shippers, were in accordance with the tariffs filed.

Held, (Saunders, D. J.), that as the alleged discrimination resulted from exaction of charges filed in accordance with the Act, complainant's only remedy was to have these corrected by the Commission.

Judgment dismissing the suit.

488.—*De Cou v. Pennsylvania R. Co., et al.* 12 I. C. C. Rep. 160. (May 29, 1907.)

Complaint of preference of Mt. Holly, N. J., over Pemberton, N. J., in rates on grain from Chicago.

For a long period prior to February, 1903, the rate to Mt. Holly had been the New York rate plus 3c., with the Pemberton rate 2c. greater. Then, by reason of water competition from Philadelphia (whose rate was 2c. less than the New York rate), the Mt. Holly rate was reduced to the flat New York rate, but the Pemberton rate was left at 5c. above that rate. Pemberton is 6 miles east of Mt. Holly, on a branch line. Under this differential, complainant could save $2\frac{1}{2}$ c. by hauling from Mt. Holly in wagons. While the case was pend-

ing, after testimony taken, defendant put in force a reconsignment rate to Pemberton from Mt. Holly of 2½c.

Held, (Knapp, Ch.), that the 5c. differential was unreasonable and should not exceed 2c.

Order accordingly.

489.—Re Through Routes and Rates. 12 I. C. C. Rep. 163. (1907.)

Opinion at request of certain shippers and railroads as to the application of alterations in rates to traffic in transit.

The Crane Company of Chicago had made a shipment from a point east of Chicago, through Chicago and Omaha to Utah. Although a bill of lading was issued by the initial carriers to destination, and was recognized by all connecting carriers, they had made no joint rate over this route, and the shipment went at the local rate of the initial carrier to Chicago plus a proportional rate from Chicago to destination. While the shipment was between the point of origin and Chicago, the proportional rate out of Chicago was reduced, but the carriers refused to give the Crane Company the benefit of the reduction. In another case, a similar question arose as to sugar shipped from western points through Omaha to points east, where the out rate from Omaha was reduced before the shipments left Omaha, but after they left the point of origin. In this case the shippers had been told that the new rate would be put in force before they made the shipments, but it did not become effective until subsequently.

Held, (Lane, C.), (a) that traffic in transit under a through route and rate was not subject to any alterations in that rate, or any part of it, effective subsequent to the date of original shipments;

(b) that traffic in transit during a series of local shipments was subject to alterations in respect to such distinct portions of the haul as had not begun prior to the change becoming effective;

(c) that there might be through routes without joint rates applicable thereto;

(d) that a joint rate is simply a through rate, every part of which has been made by express agreement between the carriers making the through route;

(e) that a through route is a continuous line of railway formed by arrangement, express or implied, between connecting carriers;

(f) that a through bill of lading, recognized by all the carriers on the route, is conclusive of a through route, but not essential to one;

(g) that a proportional rate is a through rate which can be applied only to traffic moving thereunder from point of origin to destination;

(h) that there can be but one through rate in effect between two points at a given time and this rate may be a joint rate or a combination of rates applicable to through business;

(i) that tariffs cannot be given a retroactive effect; they cannot be

made to apply to conditions other than those existing upon the date when they become effective;

(j) that in neither of the cases put, were the shippers entitled to the benefit of the reduction in the proportional rate.

490.—*United States v. Great Nor. R. Co.* 157 Fed. 288. C. C. S. D. N. Y. (June 3, 1907.)

Demurrer to indictment for giving rebates in violation of the Elkins Act.

The indictment alleged that in the fall of 1902 defendant had agreed with the American Sugar Refining Co. to transport certain sugar from New York or Boston to Sioux City, Ia., via Buffalo and West Superior. There was no published through rate to Sioux City. The published rate by all possible routes to West Superior via Buffalo was 28c., and defendant's published rate from West Superior to Sioux City 24c. Defendant agreed to return to the shipper 19c. out of the aggregate 52c. rate paid, and did so in May and June, 1904, on shipments previously made in pursuance of the agreement. The indictment was found after the passage of the Hepburn Act.

Held, (Hough, D. J.), (a) that although no indictment might have been found against the defendant corporation prior to the Elkins Act, yet the arrangement was illegal and unenforceable under the Act of 1887;

(b) that the offense was not complete until payment of the money in 1904;

(c) that the Hepburn Act did not repeal the Elkins Act as to pending causes not indicted;

(d) that no through rate being published and filed, it was illegal to charge less than the sum of the local rates;

(e) that the indictment was not bad for duplicity in alleging an offer of a rebate as well as the giving thereof;

(f) that the Act was constitutional, even though under recent decisions the Commission was given the sole right to pass, in the first instance, on the reasonableness of filed rates;

(g) that each separate and substantial payment constituted a separate offense, and was hence properly the subject of a distinct count.

Demurrer overruled.

491.—*Kansas City Board of Trade v. Chicago, B. & Q. R. Co., et al.* 12 I. C. C. Rep. 173. (June 3, 1907.)

Complaint of unreasonable re-consigning charge on grain at Kansas City as compared with the re-consigning practice at St. Louis, Minneapolis and Chicago.

In response to the demands of shippers, the defendants had established certain tracks known as "hold" tracks onto which they switched grain coming into Kansas City, allowing 48 hours for necessary inspection, and then sending the cars on to a point then designated by the shipper. Where the latter point was on the line of the

road bringing in the traffic, no extra charge was made, but where it was on another line, defendants exacted a re-consignment charge of \$2 per car, except as to certain traffic proceeding to competitive points. The operation of the "hold" tracks necessitated considerable expense and trouble to the carriers, and it did not appear that substantially better privileges existed in other cities at less charges.

Held, (Clark, C.), that the charge complained of was not unreasonable or discriminatory.

Complaint dismissed.

492.—Waxelbaum & Co. v. Atlantic C. L. R. Co., et al. 12 I. C. C. Rep. 178. (June 4, 1907.)

Complaint of unreasonable rates on peaches from Georgia to northern cities, unreasonable refrigeration charges and minimum carload rules, lack of refrigeration charges on less-than-carload shipments, and unreasonable demurrage rates.

Prior to the filing of the complaint the refrigeration charges were abrogated in the tariffs filed. The circumstances in connection with the traffic are reviewed at length in the opinion.

Held, (Clements, C.), (a) that under the amended Act, carriers were bound and could be compelled to furnish refrigeration for this traffic, and the fact that no refrigeration rates were on file was no bar to the complaint;

(b) that the rates, both for transportation and refrigeration, should be reduced to figures named, lower than those previously in force (refrigeration charge to exceed the cost of the ice);

(c) that although in view of the circumstances it was not unreasonable to refuse to quote refrigeration charges on less-than-carload shipments, it would be reasonable to allow less-than-carload shippers to consolidate their shipments to the same destination.

Order accordingly.

493.—Barden & Swarthout v. Lehigh V. R. R. Co. 12 I. C. C. Rep. 193. (June 10, 1907.)

Petition to require defendant to provide a switch connection to a proposed industrial siding in Geneva, N. Y.

In 1904, the defendants had applied for a switch and at that time a verbal understanding had been reached, but complainants had refused to sign a subsequent written agreement because of an objectionable stipulation that the switch should not be used for coal. Complainants had brought an action in Court, but had subsequently abandoned it. After the passing of the Hepburn Act, complainants began these proceedings, making, however, no written application to the carrier.

Held, (Clark, C.), (a) that unless written application was made for the switch to the carrier subsequent to the passage of the Hepburn Act, the Commission had no jurisdiction to require it;

(b) (semble) that the carrier had no right to dictate what articles

should be moved over a switch connection, except in so far as to protect itself against explosives, etc.

Complaint dismissed.

494.—Walker v. Baltimore & O. R. Co. and U. S. Express Co. 12 I. C. C. Rep. 196. (June 10, 1907.)

Complaint of refusal to extend parcel express service to persons not commuters or regular patrons of the road.

Previous to 1900 defendant had carried parcels free to outlying stations in order to stimulate suburban residence. After that time, it arranged for a parcel delivery system operated by means of stamps at rates varying according to the weight of the package. Prior to August 28, 1906, this privilege was nominally refused except to commuters and patrons of the road, but as a matter of fact it was allowed to practically everyone desiring to make use of it. Complainant, however, had tendered packages which defendants had refused to transport on the ground that he was not a commuter. On August 28, 1906, the privilege was extended to the public, but defendant contended that it had the right to restrict it to patrons and asked the Commission's opinion. The published tariffs did not specify this service.

Held, (Prouty, C.), (a) that on the facts existing prior to Aug. 28, 1906, the complaint was well founded, as it was an unjust discrimination to refuse complainant service accorded to the general public;

(b) that no opinion would be expressed as to the lawfulness of restricting parcel service to commuters, etc., but that if this service was so restricted, the tariff must clearly specify it;

(c) that at the date of the filing of this complaint, December 2, 1906, defendants were not violating the law.

Complaint dismissed.

495-A.—United States ex rel Pitcairn Coal Co. v. Baltimore & O. R. Co., et al. 154 Fed. 108. C. C. D. Md. (June 11, 1907.)

Petition for mandamus to compel defendant to allow relator its proper quota of coal cars.

Relator owned 1000 acres of coal land near Clarksburg, W. Va., and operated a mine in the "Monongah District." It complained that it did not receive its fair proportion of cars during the shortage period in the winter. The system of distribution in force was to prorate the available cars to the various mines in the region according to actual shipments in time of full car supply and to the possible capacity of the mines, the first item counting as two units and the last as one. Relator alleged that this system operated to the prejudice of the newer mines, and also complained that in dividing the available cars individual cars were not counted, these being distributed to their owners in addition to the regular share of company cars;

that new mines were allotted an arbitrary number of cars for development; that cars of foreign roads sent for fuel coal, individual cars of consumers, and Baltimore & Ohio fuel cars were not counted in reckoning the pro-rata division (shipments in these were not counted in arriving at the proper division for the next season); that consumers averaging during any month not more than 5 days detention of cars at Curtis Bay (where coal was transshipped into vessels for ocean transit) were given a premium of 50% more cars for the succeeding month; and that the method of counting actual shipments as two units, as against one unit for possible capacity, operated to the prejudice of new mines.

Held, (Morris, D. J.), (a) that in spite of the opinion to the contrary in *Riverdale Mining Co. v. Baltimore, Ohio R. Co.* (U. S. C. C. S. D. Oh., 1906, no opinion filed), in case of car shortage individual cars should be included in the available car supply in calculating the percentage to which each mine was entitled, although the owners of such cars were entitled at all times to their exclusive use, such cars being charged against them as part of their proper pro-rata share;

(b) that a reasonable arbitrary allotment of cars to new mines for development was proper;

(c) that foreign fuel cars, consumers' individual cars and B. & O. fuel cars need not be counted as part of the pro-rata share of the cars of the mine receiving them;

(d) that the Curtis Bay premiums were legal and proper;

(e) that the method of ascertaining the percentage was not unfair;

(f) (semble) that it was proper for several mines in the same ownership to pool their percentage of cars and give the whole to one mine, but was not proper to allow a mine which was not being worked to retain its percentage and give it to another mine in the same ownership.

Writ issued accordingly as to computation of percentage of distribution in respect to individual cars; other items of relief prayed for denied.

495-B.—*Baltimore & O. R. Co., et al. v. United States ex rel. Pitcairn Coal Co., et al.; United States ex rel. Pitcairn Coal Co., et al. v. Baltimore & O. R. Co., et al.*, 165 Fed. 113; C. C. A. 4th Cir. (Sept. 17, 1908.)

Error to C. C. D. Md.

Appeals from the foregoing by both plaintiff and defendant.

Held, (Pritchard, C. J.), (a) that the provision in Sec. 1 making it the statutory duty of carriers to furnish transportation, including "cars and other vehicles, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership, etc.," was evidently intended to secure justice in furnishing and distributing equipment irrespective of who owned such equipment;

(b) that in view of this provision, whenever it was shown that the carrier had not supplied the facilities demanded, the burden was on the defendant, in order to exonerate itself in the charge of undue preference, to show that it was pro-rating its cars fairly and equally among all the operators who were similarly situated, and engaged in transporting freight over its lines;

(c) that there was nothing in the Act prohibiting carriers from making any arrangements they chose as respects the ownership of the cars used on their lines, but the carriers could not, by any arrangement which they might make, bring about undue preference of shippers;

(d) that the Court below correctly decided that individual cars should be pro-rated in the same manner as system cars;

(e) that company cars furnished by the defendant to the mines for the carriage of company coal must be charged against the share of the mines so receiving them;

(f) that the same was true of cars furnished by foreign railroads for fuel coal;

(g) that the existing method of allotting cars, whereby the capacity was allowed to count as one shipment and prior shipments as two, was unfair to new mines, and that in determining the percentage of cars to which each mine was entitled, the carrier should be guided solely by the physical capacity of the mines to furnish coal for shipment;

(h) that the Curtis Bay premiums, under which shippers returning cars within a certain average time were allowed an excess of cars in the following month, was improper, and that speedy unloading of cars should be stimulated by demurrage charges against the tardy, rather than by the allowance of special facilities to the prompt;

(i) that under Sec. 1, as amended, shippers on lateral branch lines were entitled to their fair proportion of the carrier's equipment, and that the system of allotment to the Cumberland and Pennsylvania R. Co., whereby shippers on that road received cars based on the number they had received in prior years, was unreasonable, since the same method of distribution should be followed on this branch as in the allotment of cars on the defendant's main line.

Decree of Court below modified in accordance with the foregoing opinion.

McDowell, D. J., dissenting.

496.—*Rau v. Pennsylvania R. Co., et al.* 12 I. C. C. Rep. 199. (June 17, 1907.)

Complaint of unreasonable rate on empty burlap bags in less-than-carloads from Newark, N. J., to points in Virginia, as compared to rates to nearby points over a different line.

The rate complained of was 38c. per 100 pounds over the Pennsylvania, the Cumberland Valley and Norfolk & Western R. Cos., while to other Virginia points a rate of 22c. was in force by the Penn-

sylvania, the Philadelphia, Baltimore & Washington, and the Chesapeake & Ohio.

The difference in rates resulted from the fact that the first rate was under the Official Classification, while the other was under the Southern Classification. As a general rule, however, rates under the Southern Classification were higher than under the Official. Of the 38c. rate, the P. R. R. Co. received 25c. for 261 miles, while of the 22c. rate it received but 14 1-10c. for 233 miles.

Held, (Lane, C.), that in view of the facts, the 38c. rate was unreasonable and should be reduced to 22c.

Order accordingly.

497.—*New York Team Owners' Ass'n. v. Southern Pac. Co.* 12 I. C. C. Rep. 204. (June 17, 1907.)

Complaint of preference of certain truckmen over complainant, in use of defendant's pier.

In order to forward its through traffic defendant employed Kelly & Buck as truckmen, to transfer such traffic to and from vessels and railroad depots. They were allowed always to go to the head of the line when trucks were waiting at the pier in times of congestion.

Held, (Knapp, Ch.), (a) that it was reasonable for defendant to hasten the delivery of its own freight;

(b) (semble) that truckmen could not complain of preference of others, the Act relating only to shippers.

Complaint dismissed.

498.—*Shiel & Co. v. Illinois Cent. R. Co., et al.* 12 I. C. C. Rep. 210. (June 17, 1907.)

Complaint of refusal to continue the privilege of stopping in transit and re-consigning hogs at West Kankakee, Ill., on shipments from western points to points east, and demand for reparation.

Between 1903 and 1905, complainant, who had leased a yard from defendants, the Indiana, Ill. & Iowa R. Co., at a nominal rental, carried on a hog business at that point. He bought hogs in the west and had them shipped to his yard without any bill of lading. At his yard they were unloaded, sorted, and then a bill of lading was issued from the point of origin to the designated destination at through rates. In many cases the same hogs were not re-shipped to the same points, since some destinations required fat hogs and others thin ones; while every sort came from most of the points of origin. Some of the defendants objecting to this practice, which deprived them of longer hauls, the practice was discontinued and the rate was also raised. The rates advanced had not been used to any great extent. The transit privileges claimed were not included in the tariffs filed.

Held, (Clements, C.), (a) that transit privileges could not properly be applied where the shipment forwarded from the point at which the privileges were allowed was not of the same articles as those shipped in;

(b) that the reasonableness of the rates in question had not sufficiently been developed to enable the Commission to determine the question;

(c) that the claim for reparation would be denied.

Complaint dismissed, without prejudice as to the reasonableness of the rates involved.

499.—Stowe-Fuller Co. v. Pennsylvania Co., et al. 12 I. C. C. Rep. 215. (June 24, 1907.)

Complaint of different rates on fire, building and paving brick from Ohio points to New York City.

On west-bound shipments all three kinds of brick took the same rates, but east-bound the rates on fire brick were about 25% higher than on the paving and building brick, and from some points the rate on building brick was higher than on paving brick, both being lower than that on fire brick. All three kinds are composed of the same material, often burned at the same time in the same kiln, and cannot be distinguished from one another except by experts. Although usually used for different purposes they may be interchangeable in use. There was perhaps a slight difference in value in the different kinds, but on the whole there was practically no real difference in the cost or value of the service rendered in the transportation of the three varieties. The rates themselves were not complained of, but only the fact of the difference in rates between the different varieties.

Held, (Lane, C.), (a) that the Commission "cannot regard a classification as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance," and that "classification must be based upon a real distinction from a transportation standpoint;"

(b) that a classification could not properly be made to depend merely on the use to which a commodity was to be put;

(c) that to allow a difference in rates between such commodities would encourage false billing, and lead to endless multiplication of rates.

Ordered that the same rate be applied to each.

500.—Desel-Boettcher Co. v. Kansas City So. R. Co., et al. 12 I. C. C. Rep. 221. (June 24, 1907.)

Complaint of unreasonable rate on apples from Siloam Springs to Texas points compared to that previously in force.

Complaint was a shipper of apples from Siloam Springs, Ark., to Houston, Tex. Prior to 1904, points on the Kansas City Southern R. Co.'s line from Kansas City to Texas were grouped so that points south of and including Siloam Springs were in one group, and points north thereof, in another group, taking a higher rate. The country for 44 miles north and south of Siloam Springs shipped apples to Texas points, the two largest shipping stations being Siloam Springs,

and Gentry, and the latter being about 7 miles north of the former. By a change in the tariff in 1904, Siloam Springs was placed with Gentry in the northern group as regards rates on apples, although in respect to other commodities, the former rates were allowed to remain. From Siloam Springs to Houston was about 600 miles, and the rates on apples from the two groups were 49c. and 58c.

Held, (Prouty, C.), (a) that although "in the construction of groups care should be taken to produce as little discrimination as possible," "group rates must of necessity result in a certain amount of discrimination;"

(b) that in this case the two largest apple shipping points in this region were properly grouped together and the discrimination was not undue.

Complaint dismissed.

501.—Dallas Freight Bureau v. Gulf, Colo. & S. F. R. Co., et al,
12 I. C. C. Rep. 223. (June 10, 1907.)

Complaint of unreasonable rates on coal from mines in Indian Territory to Dallas, Texas.

The rates in question, up to 1904, on mine run coal had been \$2.10 per ton, and on slack \$1.50 per ton. In that year oil became very cheap, and to meet the competition arising thereby, the rates were reduced to \$1.85 and \$1.25. In 1907 oil became less plentiful and the old rates were restored again. Complainants asked that the rates be fixed at \$1.75 and \$1.25. The volume of traffic had largely increased since 1904. Complainants offered in evidence tariffs showing lower rates on coal for greater distances over other lines. No reparation was asked until after the hearing.

Held, (Harlan, C.), (a) that although the rates per ton mile over other routes on other lines to other destinations were often suggestive, they were by no means conclusive, and not so valuable as rates on the same or adjacent lines in the immediate territory where the same conditions existed;

(b) that in view of the increase of traffic a rate lower than that in force in 1903 was proper, but this need not be so low as the competitive rate in force from 1904 to 1907;

(c) that unless reasonable ground be shown or the Commission itself so ordered, a claim for reparation could not be brought forward after the Commission had taken a case under advisement.

Order that rates be fixed at \$1.90 and \$1.40 respectively.

502.—Southern Grocery Co., et al. v. Georgia N. R. Co., et al. 12
I. C. C. Rep. 229. (June 24, 1907.)

Complaint of preference of nearby Georgia towns over Moultrie, Ga., in rates from Louisville, Cincinnati, Memphis, Nashville and St. Louis.

The rates to Moultrie were made by combining the through rates to Albany and Brunswick, Ga., with the local rates from there to

Moultrie. Defendants, however, were parties to through rates to Tifton, Valdosta, Quitman, Thomasville and Fitzgerald, Ga., which were much lower. Moultrie had, during the past few years, grown very rapidly and the circumstances surrounding traffic to the other points did not appear to be substantially dissimilar to those affecting the Moultrie business.

Held, (Clements, C.), that no higher rates should be charged to Moultrie than to such points.

Order accordingly.

503.—Arkansas Railroad Com'rs. v. St. Louis & N. Ark. R. Co.
12 I. C. C. Rep. 233. (June 24, 1907.)

Complaint of unreasonable interstate passenger rates over defendant's line between Seligman, Mo., and Beaver, Ark.

The rates fixed by the Arkansas Commission were 3c. per mile, and in Missouri the authorized rate would seem to have been 4c. a mile. The rate complained of was at the rate of 6 2-3c. a mile. Defendant's road was through a new country with no outlet at the southern terminus, and it had been recently put to large expense by State legislation. It was not making sufficient to more than meet operating expenses and fixed charges.

Held, (Clements, C.), that for the present the rates did not appear to be unreasonable.

Complaint dismissed.

504.—China & Japan Trading Co., Ltd., et al. v. Georgia R. Co., et al. 12 I. C. C. Rep. 236. (June 24, 1907.)

Complaint of unreasonable rates on cotton piece goods from southern mills to the Orient, and preference of New England mills by lower rates therefrom.

The rate from New England mills, through Pacific Coast ports, to the Orient was 85c. per 100 pounds, while that from southern mills was \$1.25. This commodity might reach the east by water through the Suez Canal or by rail overland to the Pacific Coast and from there by water. In order to use the Suez Canal route, however, the commodity must move through New York. Prior to 1906, the rates had been in a very demoralized condition and had been fixed by agreement of all the carriers, the rate from the southern mills having been somewhat increased. In *Enterprise Mfg. Co. v. Georgia R. Co.*, 12 I. C. C. Rep. 130, (480), the Commission had held reasonable a rate of \$1.15 from southern mills to Pacific coast terminals. There appeared to be no motive on the part of the carriers for discriminating against the southern mills.

Held, (Prouty, C.), (a) that the rate in question was not unreasonable nor discriminatory;

(b) that although where it appeared that a rate had been increased by the concerted action of naturally competing lines, this fact would rob the rate of the presumption of reasonableness which

should otherwise attach, yet where, after due weight was given to this and to other considerations, the rate resulting in effect did not appear to be unreasonable, the mere fact that it was the product of an unlawful combination would not justify the Commission in setting it aside.

Complaint dismissed.

505.—Nobles Bros. Grocer Co., et al. v. Fort Worth & Denver City R. Co. 12 I. C. C. Rep. 242. (June 24, 1907.)

Complaint of unreasonable class rates from Kansas City and St. Louis to Amarillo, Tex., and petition that defendants be compelled to make Amarillo a Texas common point.

It appeared that Amarillo was situated outside of the group of localities to which competition had given the same rates and which were known as Texas common points, and that although some other localities to Amarillo, which were situated similarly, had been made Texas common points, yet these were not points with which Amarillo was in competition. The rates to Amarillo were considerably higher than those to Fort Worth and other towns in the Burnt District, and no adequate reason appeared for this disparity.

Held, (Prouty, C.), (a) that Amarillo need not be made a Texas common point;

(b) that the rates to Amarillo should be reduced to figures named. Order accordingly.

506.—Edwards v. Nashville, Chat. & St. L. R. Co. 12 I. C. C. Rep. 247. (June 24, 1907.)

Complaint of discrimination against complainant, a colored woman, in facilities on the passenger train between Chattanooga, Tenn., and Dalton, Ga.

Complainant on entering the car assigned to white persons, was requested to go into the forward part of the car assigned to colored persons. On her refusal, she was removed thereto with such force as was necessary. She contended that the car into which she was put was not as clean as the first car, but the evidence did not support this. In other respects, however, the conditions in the car for the use of white passengers was superior to that provided for colored persons.

Held, (Lane, C.), that failure to accord equal facilities to white and colored persons paying the same fare was undue discrimination and defendant should cease therefrom.

Order accordingly.

507.—Omaha Cooperage Co. v. Nashville, Chat. & St. L. R. Co., et al. 12 I. C. C. Rep. 250. (June 24, 1907.)

Complaint of unreasonable rates on white oak staves and headings from Tennessee points to East St. Louis, destined for South Omaha, in comparison to the rate on the same goods destined for Alexandria, Mo., and Keokuk, Iowa.

No joint rate to South Omaha was made by the two carriers taking the freight as far as St. Louis (the N. C. & St. L. R. Co. and the Ill. Cent. R. Co.) On traffic to Alexandria and Keokuk there was a through route and joint rate, but the N. C. & St. L. R. Co. and the Illinois Cent. R. Co. received of this their full local rate. The reasonableness of the through rate was not complained of, nor was that part of the rate charged by the carriers beyond East St. Louis.

Held, (Lane, C.), that no discrimination appeared.

Complaint dismissed.

508.—Howard Mills Co. v. Missouri Pac. R. Co., et al. 12 I. C. C. Rep. 258. (July 8, 1907.)

Complaint of discrimination against complainant and other Kansas millers, in favor of California millers, by a differential of 10c. in favor of flour against wheat from Wichita to Pacific Coast terminals, and by a differential of 35c. to Phoenix, Arizona.

The wheat rate to California was 55c. and the flour rate 65c., while to Phoenix, the wheat rate was \$1.00 and the flour rate \$1.35. It appeared that Kansas millers had a considerable advantage over the California ones in the cost of labor and in the sale of by-products. The Commission, in previous cases, had never sanctioned differentials higher than 5c. in favor of wheat.

Held, (Prouty, C.), (a) that flour being of greater value and being a product of wheat, some differential in favor of wheat is generally justified;

(b) that where business conditions had adapted themselves to a given rate relation, and industries had been built up in reliance thereon, in the absence of evidence that new conditions had intervened, the carrier should not change an existing rate relation, nor would the Commission authorize it to do so;

(c) that existing differentials were too great and should be reduced to 7c.

Order accordingly.

509.—Hope Cotton Oil Co. v. Tex. & Pac. R. Co., et al. 12 I. C. C. Rep. 265. (July 8, 1907.)

Complaint of unreasonable through rate on cotton-seed from Louisiana points on defendant's line north of Shreveport to Hope, Ark.

This was another phase of the controversy in (380), *supra*. At the hearing, defendants presented no evidence, merely stating that in place of the existing through rate of 67c., they had put in force a through rate of 30c. The combination of the local rates on Texarkana was 17½c. The rate from Texarkana to Hope of 5c. was prescribed by the Arkansas Commission, but was not alleged by the defendants to be unreasonably low.

Held, (Harlan, C.), (a) that without evidence impeaching the reasonableness of the local rates, any through rate in excess of the sum

of the locals was unreasonable, and a through rate of 17½c. would be ordered.

Order accordingly.

510.—McRae Terminal Ry. v. Southern Ry. Co. and Seaboard A. L. Ry. 12 I. C. C. Rep. 270. (June 24, 1907.)

Petition by a common carrier for a connection with its track.

The complainant company had been organized by the McRae Oil Co., which operated a large mill on the line of the Seaboard A. L. Co., at the northern terminus of the complainant's line. Complainant's road was one mile in length and ran up to the end of the switch connecting with the Seaboard A. L. The latter, however, had recently removed the rail connections. In order to make connection with the Southern Ry. in the city of McRae, a certain amount of grading would be necessary, but this would cost but a small amount and was practicable. The complainant's line could furnish no new traffic to the defendants, but only that of the Oil Co., which was already on the line of the Seaboard A. L. R. Co. Written demand had been made on both defendants for a switch connection.

Held, (Prouty, C.), that the connections required should be made at the expense of the complainant, but for the present no order would be made.

The Chairman and Commissioners Clark and Harlan dissented, on the ground that the switch provision was for the benefit of shippers and not for the benefit of carriers, and that the public interest did not demand this connection, it being requested merely for the purpose of subsequently getting divisions of through rate.

In November, 1907, the parties, not having been able to agree as to the connections prayed for, submitted the case again to the Commission and it was ordered, the same Commissioners dissenting, that connection be made with the Seaboard Air Line at the end of the switch above referred to on payment by complainant of \$150.00. The question of the connection with the Southern track was postponed. 12 I. C. C. Rep. 545.

511.—United States ex rel. Logan Coal Co. v. Pennsylvania R. Co. 154 Fed. 497. C. C. E. D. Pa. (July, 1907.)

Petition for mandamus requiring defendant to furnish to relator its proper pro-rata share of cars for bituminous coal.

Relator owned 150 coal cars. Prior to 1906 these cars, together with foreign fuel cars, were not charged against the allotted share to any mine. On January 1, 1906, defendant put in force a rule by which the capacity of the available private and foreign fuel cars was deducted from the rated capacity of the mine, in determining the proportion of company cars for any mine. By this system the owner of private cars still had a small advantage but not such a one as formerly.

Held, (Holland, J.), (a) that the rule in question did not work any undue discrimination against the relator in favor of shippers owning no individual cars;

(b) that defendant was not bound to have on hand sufficient coal cars to meet the maximum demand during the winter months;

(c) that although under the Constitution and laws of Pennsylvania relator had the right to have his individual cars hauled by defendant, this must be done subject to the provisions of the Interstate Commerce Act.

Petition dismissed.

512.—White & Co. v. Baltimore & O. S. W. R. Co., et al. 12 I. C. C. Rep. 306. (July 8, 1907.)

Demand for reparation on shipments of apples from Illinois points to New York City, by reason of charge on estimated weights greater than actual weights.

For seven years prior to 1907, it had been the practice, in Official Classification territory, to fix rates on apple shipments on estimated weights of 160 pounds to the barrel. On July 1, 1907, this rule was altered, and the actual weights were charged for.

Held, (Lane, C.), that the practice of estimating weights was not, in itself, necessarily illegal, the estimated weight being taken into consideration in making the rate itself, and in the present case, reparation would be denied.

Order accordingly.

513.—Rogers v. Philadelphia & R. R. Co. 12 I. C. C. Rep. 308. (July 8, 1907.)

Complaint of discrimination by embargo on hay and straw against complainant, and demand for reparation.

Complainant received shipments of hay and straw at defendant's station at 23d and Arch Streets, in Philadelphia. During July, 1907, the traffic being very much congested, defendants issued an embargo on hay against the three largest shippers, of which complainant was one. Complainant claimed reparation for a loss of \$190.70 on seven specific cars, this being due to the falling of the market during the time of delay, and to the additional expense of getting the hay from a more inconvenient station. He also claimed \$10,000.00 for injury to his business. It was not shown that the seven cars were from points outside of Pennsylvania.

Held, (Lane, C.), (a) that whatever might be said of an embargo on a particular commodity in time of congestion, an embargo refusing transportation facilities to some parties while according them to others for the same commodity was unjustified;

(b) that reparation would be allowed on the seven cars on proof that they were interstate shipments, but consequential damages for loss of business would be denied.

514.—Muskogee Commercial Club, et al. v. Missouri, K. & T. R. Co. 12 I. C. C. Rep. 311. (July 8, 1907.)

Complaint of preference of South McAlester, Indian Territory, over Muskogee, Indian Territory, by regulation with reference to compression of cotton.

Muskogee and South McAlester were 62 miles apart on defendant's line, Muskogee being to the north. Defendant put in force a regulation by which cotton originating at or near Muskogee might be taken back to McAlester and compressed, and then forwarded north or east at the total through rate from the point of origin, without reference to the back haul; but this privilege was not allowed for the benefit of the Muskogee compresses on cotton originating at South McAlester. The defendants sought to justify it on the ground that a powerful shipper, located near South McAlester, threatened to withdraw all his traffic unless the Muskogee cotton were permitted to come to South McAlester for compression. It appeared that a number of compresses in the region were owned by shippers.

Held, (Lane, C.), (a) that although the Commission had no power to prevent a carrier from discriminating in reference to its internal economy, nevertheless, where, as in the present case, the parties doing a given service for the carrier were also shippers, the Commission could see to it that no shipper was unduly preferred thereby;

(b) that all privileges granted to one compressing point must also be granted to the other.

Order accordingly.

Re-hearing denied. 13 I. C. C. Rep. 68. Dec., 1907.

515.—Pacific Coast Jobbers' and Manufacturers' Ass'n. v. Southern Pac. Co. 12 I. C. C. Rep. 319. (June 24, 1907.)

Complaint of alleged unreasonable tariff charge on west-bound traffic into San Francisco.

Defendant controlled two lines running into San Francisco. One of these, known as the Ogden route, reached San Francisco at Oakland, and the freight coming over this route was ferried across the bay and landed at property owned by the State of California, which exacted a toll of about 5c. per ton. The other line entered San Francisco without passing over this land and was the newer route. Defendant's tariffs provided that in addition to the regular transportation charges, west-bound shipments at San Francisco were subject to an additional charge equivalent to the toll levied by the State, this requirement applying, however, to shipments over both routes.

Held, (Lane, C.), (a) that as to the traffic coming over the route not required to pay the toll, defendants might not legally include in its rate a charge which it was not required to pay;

(b) that "a tariff or schedule of transportation does not conform to the law which makes the rate charged dependent upon one or more factors which do not enter into transportation as it is actually conducted;"

(c) that defendant should desist from making the charge in question where not actually paid by it.

Order accordingly.

516.—*Mitchell v. Atchison, T. & S. F. R. Co., et al.* 12 I. C. C. Rep. 324. (July 8, 1907.)

Complaint of unreasonable rates on wheat from Oklahoma City to Gainesville and Fort Worth, Tex.

The short line distance to Gainesville was 140 miles, and to Fort Worth, 202 miles, and the rate to both places was 28½c. Rates to Texas points were constructed according to the group system, and the points in question were at the near end of the group. The rates were much higher than intrastate rates for the same distance in the surrounding country.

Held, (Prouty, C.), that the rates were unreasonable and should be reduced to 20c. to Gainesville and 22c. to Fort Worth, such rates, however, to apply only to grain for local consumption.

Order accordingly.

517.—*Enterprise Transportation Co. v. Pennsylvania R. Co. and New England Nav. Co.* 12 I. C. C. Rep. 326. (July 8, 1907.)

Petition for establishment of through route and rate on fish between Jamestown, R. I., and Philadelphia, Pa.

Complainant, since 1905, had been operating a line of steamers between Fall River and New York City, calling at Jamestown, R. I. The New England Nav. Co., which was owned by the New York, N. H. & H. R. Co., and controlled by the Pennsylvania R. R. Co., operated another line of steamers between Fall River and New York City, which called at Newport. In the summer of 1906, the New England Nav. Co. established an office at Jamestown, where it accepted shipments of fish and other commodities for New York and points beyond, such shipments being taken on through bills of lading to destination. The freight was carried, however, from Jamestown to Newport by the Narragansett Ferry Co., or by the Newport and Jamestown Ferry Co. The New England Nav. Co. and the Pennsylvania R. Co., had a through rate to Philadelphia from Newport of 34c. per 100 pounds, and from Jamestown of 37c. The Ferry Companies were named as parties to the latter rate, but did not concur therein. Of these through rates, the P. R. R. Co. accepted 7c. as its division, while on the shipments received from the complainant company it charged its full local rate of 22c. from New York to Philadelphia, and refused to join in a through route agreement. In either case, the freight was tendered to it at New York at the same time and under the same circumstances. The Jamestown office of the New England Nav. Co. was discontinued about the first of November, 1906, and not re-opened until February, 1907. This complaint was filed in December, 1906. The service over the line of the New England Nav. Co.

was, if anything, more satisfactory than over complainant's proposed line, by reason of the fact that the steamers of the New England Nav. Co. left some hours later and arrived at New York at the same time.

Held, (Prouty, C.), (a) that the public interest required the establishment of the proposed through route;

(b) that the "reasonable and satisfactory through route" which would preclude the Commission from establishing an additional route, must be one composed of carriers all subject to the jurisdiction of the commission, and the fact that the Ferry Co. did not concur in the tariff filed, rendered the existing route one which did not destroy the jurisdiction of the Commission;

(c) that this was not a case in which the line of the New England Nav. Co. was extended to Jamestown by the employment of an independent carrier as its agent;

(d) that, although, as a general rule, a rate was not rendered "unsatisfactory" by the unreasonableness of the existing charges over it, yet in this case the fact that the existing route proceeded by way of Newport, making the Jamestown rate higher than that from Newport, also tended to render the existing route "unsatisfactory;"

(e) that the fact that the defendant's route was discontinued at the time of the filing of this complaint, gave the Commission jurisdiction, even though that route had formerly been satisfactory; and its re-establishment previous to the hearing did not divest the Commission of jurisdiction;

(f) that neither at the date of the filing of the petition nor at the time of the hearing was there a reasonable and satisfactory through route between Jamestown and Philadelphia;

(g) that if the conditions of transportation were such as to enable the complainant to collect any of the freight charges, it should give to the P. R. R. Co. a suitable bond of indemnity;

(h) that a joint through rate should be established, not to exceed 34c. per 100 pounds, but of this amount the P. R. R. Co. was not necessarily restricted to 7c. as its division, this amount being left for the adjustment of the parties.

Order accordingly.

518.—Roswell Commercial Club, et al. v. Atchison, T. & S. F. R. Co., et al. 12 I. C. C. Rep. 339. (June 24, 1907.)

Complaint of unreasonable class rates from Kansas City and St. Louis, Mo., Galveston, Tex., and Denver, Col., to Roswell, Artesia, Hagerman, and Carlsbad, New Mexico, and of unreasonable rates on grain and grain products from points in Kansas and Oklahoma; on lumber from Texas and Louisiana points; on salt in sacks from Hutchinson, Kas., to said points in New Mexico; and on apples, alfalfa and alfalfa meal from said points in New Mexico to Fort Worth, Texas.

On consideration of the transportation conditions surrounding this traffic, and of the return to the carriers from it and of the probable

consequence of the reductions asked, the Commission, in an opinion by Prouty, C., ordered reduction on practically all of these rates to figures given.

519.—Kansas Farmers', etc., Club v. Atchison, T. & S. F. R. Co., et al. 12 I. C. C. Rep. 351. (July 8, 1907.)

Complaint of unreasonable rates on grain and grain products from Wichita, Kas., and surrounding points, to Kansas City, Mo., and to Galveston, Texas, for export, and to various Texas points for domestic consumption.

It appeared that the rates to the Missouri River had been recently reduced by reason of certain Kansas legislation. The export rate from Wichita to Galveston was 28½c., while that from Kansas City was but 17½c. for a haul 225 miles greater through Wichita, but the Kansas City rate was fixed by very strong competition with all-rail routes to New York.

Held, (Prouty, C.), (a) that although the competition at Kansas City justified a considerably lower rate from that point, yet, in view of the facts, the 28½c. rate from Wichita was unreasonable *per se*, and should not exceed 25c.;

(b) that the rates to Texas points for domestic consumption were also unreasonable and should be reduced to figures given;

(c) that the rates on corn should be 3c. lower than those on wheat. Order accordingly.

520.—Oklahoma Territory v. Chicago, R. I. & Pac. R. Co., et al. 12 I. C. C. Rep. 367. (July 8, 1907.)

Complaint of unreasonable rates on wheat and corn from Oklahoma to Galveston for export.

The Commission held, (Prouty, C.), that the principles here involved were controlled by the decision in *Farmers', Merchants' & Shippers' Club of Kansas*, (519), and reductions in rates were ordered as specified.

521.—Union Springs Commercial Ass'n. v. Louisville & N. R. Co., et al. 12 I. C. C. Rep. 372. (July 11, 1907.)

Complaint of preference of Columbus, Opelika, Troy, Montgomery and Eufaula, over Union Springs, Ala., in rates from northern points.

The rates to Union Springs were made by combinations on Columbus or Montgomery even where the traffic passed through Union Springs to one of these points. The lower rates to the other towns were the result of competition there, and there was no testimony presented other than the comparison of rates.

Held, (Clements, C.), that in view of the decisions of the Supreme Court, these rates could not be found unreasonable *per se*.

Complaint dismissed.

522.—Union Springs Commercial Ass'n. v. Central of Georgia R. Co. 12 I. C. C. Rep. 375. (July 10, 1907.)

Complaint of discrimination in refusal to allow the privilege of compression of cotton in transit at Union Springs on the same terms as that allowed compresses located in the surrounding territory, and petition that reasonable rates be fixed on uncompressed cotton to Union Springs and on compressed cotton therefrom to points of destination.

The defendant was interested in a number of compresses. It made no distinction in rates between compressed and uncompressed cotton, but was accustomed to have the cotton compressed for its own convenience at the compresses owned or controlled by it. Shippers were thus not permitted to choose their own compress unless they wished to pay the cost of compression. The question involved appeared to be an important one, affecting a large territory, and the evidence was not complete nor satisfactory.

Held, (Clements, C.), that the testimony did not sufficiently show the necessity for different rates on the compressed and uncompressed cotton, nor what would be reasonable compression allowances; nor the propriety of such allowances to compress owners compressing their own cotton; and in view of this fact, the complaint should be dismissed without prejudice.

523.—Warren Mfg. Co., et al. v. Southern Ry. Co., et al. 12 I. C. C. Rep. 381. (July 11, 1907.)

Complaint of unreasonable rate on cotton-piece goods from Augusta, Ga., to New York, and demand for reparation.

The grounds on which the rates in question were claimed to be unreasonable were: First, that for 13 years prior to the establishment of the present rate, lower rates had been in effect; second, that the existing rates were the result of combination by the carriers in violation of the Sherman Act; third, that terminal and transfer charges and insurance rates were included which were excessive, making the total rate too high. The testimony did not substantiate the first and third propositions.

Held, (Clements, C.), that although the fact that rates were the result of concerted action, was properly to be considered, this fact alone did not necessarily show the rates to be unreasonable.

Complaint dismissed and reparation denied.

524.—Riverside Mills v. Southern Ry., et al. 12 I. C. C. Rep. 388. (July 11, 1907.)

Complaint of unreasonable rate on cotton waste from Augusta, Ga., to New York, and demand for reparation.

The rate in question was 41c. per 100 pounds, and was the same as that on cotton goods, although the latter were four times as valuable, and much more difficult to handle, and much more easily damaged.

Held, (Clements, C.), that the rate in question was unreasonable and should be reduced to 35c., but that no order would be made for reparation.

Order accordingly.

525.—*Quimby, et al. v. Clyde S. S. Co., et al.* 12 I. C. C. Rep. 392. (July 11, 1907.)

Complaint of unreasonable rates from northern Atlantic ports to a group of suburban mills near Augusta, Ga.

For 10 or 12 years prior to the absorption of the South Carolina and Georgia R. Co., by the Southern R. Co., the rates to this group had been the same as those to Augusta, Ga., but at the time of such absorption, the group rates were increased about 10%. There was competition at Augusta which did not exist at these points.

Held, (Clements, C.), that although the competition removed the prohibition of the fourth section, and although the facts did not present such a case of vested rights as to entitle these points to an indefinite continuation of the rates previously enjoyed, yet such long continuance made the former rates presumptively reasonable, and in view of the manner in which they were changed, they appeared to be unjust in so far as they exceeded the rates to Augusta.

Order accordingly.

526.—*Ohio Railroad Commission, et al. v. Hocking Valley R. Co. and Wheeling & L. E. R. Co.* 12 I. C. C. Rep. 398. (July 11, 1907.)

Complaint of discrimination in distribution of coal cars.

Defendants in distributing cars for bituminous coal to mines along their lines in time of ear famine, did not count foreign fuel cars or individual cars. The distribution was based on tonnage, but on what exact theory does not appear. The failure to count foreign fuel cars was alleged to be the result of threats by foreign roads to cut off the supply of such cars unless they were not counted in the general distribution.

Held, (Clark, C.), in an opinion discussing *United States ex rel Piteairn Coal Co. v. B. & O. R. Co.*, 154 Fed. 108, (495-A), and *Logan Coal Co. v. P. R. R. Co.*, 154 Fed. 497, (511), that mines should be given all the foreign railway fuel cars consigned to them, and all the private cars owned or leased by them, but that such cars should be counted in the distribution, and no mine should receive any system cars beyond the number required to make up its rated proportion after counting the foreign fuel and private cars consigned to or used by it.

Order accordingly.

527.—*American Fruit Union v. Cincinnati, N. O. & T. P. R. Co.* 12 I. C. C. Rep. 411. (July 11, 1907.)

Complaint of unreasonable rate on strawberries from Chattanooga, Ga., to Cincinnati, Ohio, and demand for reparation.

The rate in question was 18c. per crate for transportation, and 9c. per crate for refrigeration. This rate was higher than that for similar freight on other roads in like territory, and was the result of an agreement with shippers, in consideration of exceptionally fast service. During the season of 1907, by reason of repairs to the road, the trains did not make schedule time.

Held, (Clark, C.), (a) that although a road was not bound, as a general rule, to reduce its rates where, by reason of pending repairs, its service was delayed, nevertheless it was unreasonable to exact an exceptional charge for fast time when its trains were not making such time;

(b) that the rate should be reduced from 27c. to 22c. during the shipping season of 1907, and shippers who had paid the 27c. rate during that season be awarded reparation.

Order accordingly.

528.—Poor Grain Co. v. Chicago, B. & Q. R. Co., et al. 12 I. C. C. Rep. 418. (July 8, 1907.)

Complaint of unreasonable charge for grain shipments in excess of contract rate, and demand for reparation.

Complainant inquired of several of the Chicago, Burlington & Quincy R. Co.'s agents with regard to the rate on wheat from Marquette and Phillips, Neb., to Reno, Nev., and California terminals. He was told that the rate was 55c. per 100 pounds, and shipped one car to Reno and three to California points on the faith of that rate, billing the cars to Denver and then reconsigning them to destination while en route. There was no published through rate on wheat to Reno via the C. B. & Q. road, the sum of the local published rates being 85c. The published through rate to California points was 75c. By the cheapest route over which the C. B. & Q. road could have sent the California shipments, the sum of the local rates would have been 61½c., but this would have given the C. B. & Q. a very short haul. It wished to discourage grain shipments west from Nebraska as it got a much longer haul to Chicago. Its published rate on corn to California was 55c., and the Union Pac. R. Co. also published that rate on both wheat and corn.

Held, (Harlan, C.), (a) that a rate regularly published was no longer a rate imposed by the carrier, but the rate imposed by law, and could be altered only by the Commission's finding, after investigation, that it was unreasonable or discriminating;

(b) that the complainant's contract for a 55c. rate gave him no rights on either shipment (though there was no through rate to Reno);

(c) that although it was the carrier's duty to forward traffic by the cheapest route, in the present case the defendant was relieved from that duty by reason of the shipper's express designation of the route;

(d) that a carrier might not establish a prohibitive rate on any

commodity in any direction merely because it was to its advantage to ship in a given direction;

(e) that the through rate to California points was unreasonable and should not exceed 65c., but that since there appeared to be no wheat shipments to Reno, except the carload in question, that rate would not be passed on.

Order accordingly.

Re-hearing denied. 12 I. C. C. Rep. 469. (Oct. 18, 1907.)

529.—Dallas Freight Bureau v. Missouri, Kas. & Tex. Ry. Co. et al. 12 I. C. C. Rep. 427. (July 10, 1907.)

Complaint of unreasonable rates on certain commodities from St. Louis, Mo., to New Orleans, La., and Dallas, Tex.

All Texas common points, with a few exceptions, were grouped together from all points on, or east of, the Missouri and Mississippi Rivers, and commercial conditions in Texas had been developed on this basis. The only witness for complainant was its secretary, and his testimony consisted almost entirely of a comparison of the rates complained of with other rates in other parts of the country for like distances, but under dissimilar conditions. No merchant made any complaint, and to adjust the rates to Dallas would disturb the whole system.

Held, (Harlan, C.), (a) that the Commission would adjust rates fixed by carriers only when they appeared to be unreasonable or discriminatory, and would make investigation of its own motion only when it was clear that the public interest demanded it;

(b) that the elaborate system of interdependent rates would not be disturbed on testimony such as that presented.

Complaint dismissed.

Clements, C., dissented.

530-A.—United States v. Standard Oil Co., of Indiana. 155 Fed. 305; D. C. N. D. Ill. (Aug. 3, 1907.)

Indictment for receiving less than published rates.

Defendant shipped oil from Whiting, Ind., to St. Louis, Mo. The Chicago & Alton R. Co. operated a line from Chicago to East St. Louis, the Chicago Terminal Association from Whiting to Chappell, Ill., a point on the C. & A. line near Chicago, and three other companies operated terminal roads from East St. Louis to St. Louis. Prior to the period in which the offence in question was alleged to have been committed, the C. & A. had filed, with a number of other roads, an oil rate of 18c. per 100 pounds from Chicago to St. Louis, and with the Chicago Terminal Association had filed a joint tariff stating that the rate from Whiting should be the same as that from Chicago. The C. & A. had also filed schedules of the three terminal companies, fixing a rate of 1½c. on oil from St. Louis to East St. Louis. The shipments in question were made over these routes, some to St. Louis and others to East St. Louis. To St. Louis defendants

paid 6c. per 100 pounds, and to East St. Louis 7½c., this being the rate quoted by the C. & A. rate clerk to defendant's traffic manager in December, 1902, 1903 and 1904 for each of the succeeding years. The traffic manager testified that he had been misled by the statement of the rate clerk that these rates had been filed. He also said that he took it for granted that they had been filed. From Judge Landis' opinion it would seem that the jury found that he was not misled. The word "Chappell" did not specifically appear in the schedules filed, but in them there was a direction to agents to charge no more for the shorter than for the longer distance. In mitigation of damages defendant claimed that during the period in question there was a 6¼c. rate in force by another route, which was the equivalent of a 6c. rate by the route in question. It appeared, however, that this rate had not been properly filed by the competing road.

Held, (Landis, D. J.), (a) that the Elkins Act was not unconstitutional as depriving shippers of the right to contract for such rates as they pleased, as a delegation of the legislative function of fixing rates to the carriers, as depriving shippers of their right to have a Court pass on the reasonableness of rates, or as exceeding the power given to Congress by the Commerce Clause;

(b) that although the C. & A.'s own line, as to these shipments, was wholly intrastate, yet under the facts as to this traffic, there was a common arrangement for interstate shipments, making such subject to the Act;

(c) that the rate filed sufficiently covered shipments from Chappell;

(d) that "in the absence of a formal agreement establishing a joint through rate, effective over a through route made up of the connecting lines of more than one carrier, the lawful rate in force over such through route is the sum of the local rates lawfully established by the several connecting carriers over their respective roads;"

(e) that the existence of a low competitive rate was evidence in mitigation of damages, though not on the merits;

(f) that the shipment of each carload constituted a separate offense;

(g) that the Standard Oil Co., of New Jersey, the owner of the entire stock of the defendant company, was the real defendant in this case.

Fine of \$29,240,000 imposed, being the maximum on each count.

530-B.—*Standard Oil Co. of Indiana v. United States*. 164 Fed. 376; C. C. A. 7th Cir. (July, 1908.)

Appeal from judgment and sentence of the District Court in the foregoing.

Held, (Grossepup, C. J.), (a) that plaintiff in error could not properly be convicted of any more offenses than there were settlements and payments by it for the transportation in question;

(b) that before a shipper could be held guilty of accepting concessions from a lawfully published rate, the shipper must have knowledge of what the lawfully published rate was, and such a shipper was not put on notice of what the lawful rate was by the fact that the rate was on file;

(c) that the Standard Oil Co. of New Jersey, not being a party to a record, could not be convicted of an offense committed by the Standard Oil Co. of Indiana.

Judgment reversed and case remanded for new trial.

Rehearing denied. (Nov., 1908.)

531.—Baltimore & O. R. Co. v. Hamburger, et al. 155 Fed. 849; C. C. E. D. Va. (Aug. 30, 1907.)

Demurrers to bills to enjoin defendants from selling non-transferable interstate passenger tickets.

In the schedules filed and posted, the non-transferable provisions of the tickets were not mentioned.

Held, (Waddill, D. J.), (a) that under Sec. 6 as amended, the published schedules must show "all privileges or facilities, granted or allowed," and all rules and regulations affecting rates;

(b) that the failure to specify the non-transferable provisions of these tickets made the imposition of such provisions void.

Demurrers sustained.

532.—Jewett Brothers & Jewett v. Chicago, Milwaukee & St. Paul Railway Company. 156 Fed. 160; C. C. District of S. D. (Sept. 27, 1907.)

Bill in equity, submitted on pleadings and stipulation, for an injunction to prevent defendant from putting in force certain proposed rates until the Commission, in a pending controversy, had passed upon their legality.

The complainant was a merchant at Sioux Falls, S. D., and alleged that the rates to eastern points were unreasonable and unduly discriminated in favor of shippers from Sioux City, Iowa. (See *Daniels v. Chicago, R. I. & P. R. Co.*, 6 I. C. C. Rep. 458.) (200.)

Held, (Carland, D. J.), (a) that a Court of Equity had jurisdiction to enjoin the putting in force of a proposed schedule;

(b) that the Abilene Cotton Oil case did not control the question at bar since it applied only where rates had been published and were in force;

(c) that in the present case the relief prayed for must be denied, since the Court was not asked to go into investigation of the lawfulness of the proposed schedule, the suit being merely one in aid of proceedings before the Commission, and since the Commission had no jurisdiction to inquire as to the legality of the proposed schedule until it went into effect;

(d) (semble) that in order to entitle complainant to relief in such a case, his right to recover at law must be clear;

(e) (semble) that the rates in question were not unduly discriminating.

Bill dismissed.

523.—**Albany Produce Co. v. Chicago, B. & Q. R. Co.** 12 I. C. C. Rep. 434. (Oct. 8, 1907.)

Complaint of unreasonable rate on coal from Centerville District, Iowa, to Albany, Mo., and preference of St. Joseph, Mo.

At the time of the complaint, the rate to Albany was \$1.25, while that to St. Joseph, through Albany, 49 miles farther, was 70c. The Albany rate was reduced, however, after the case was submitted, to \$1 per ton, and there appeared to be no competition between Albany and St. Joseph.

Held, (Knapp, Ch.), that there was not sufficient on the record to warrant the finding that the Albany rate was unreasonable *per se*, and the evidence disclosed no discrimination in favor of St. Joseph.

Complaint dismissed.

534.—**Paper Mills Co. v. Pennsylvania R. Co., et al.** 12 I. C. C. Rep. 438. (Oct. 14, 1907.)

Complaint of refusal by defendants to apply carload rates on mixed carloads of paper bags and wrapping paper from Baltimore, Md., to points in Southern Classification Territory.

The above privilege had long been allowed in Western and Official Classification Territory, but not in Southern. On intrastate shipments in Georgia, the State Commission required the allowance of the privilege in question, giving shippers from Atlanta to Georgia points an advantage over complainants.

Held, (Knapp, Ch.), (a) that as a general rule the Commission disapproved of the imposition by carriers of conditions which could be taken advantage of by a few large shippers only;

(b) that where a regulation had been long in force in a given territory, business interests became so adjusted to it as to make any abrupt and material change therein almost certain to produce undue discrimination;

(c) that in spite of the State Regulation in Georgia, the existing practice did not appear to be unlawful.

Complaint dismissed.

535.—**Cudahy Packing Co. v. Chicago & N. W. R. Co.** 12 I. C. C. Rep. 446. (Oct. 7, 1907.)

Complaint of alleged improper exaction of demurrage charges on private cars standing on siding at complainant's warehouse.

The siding in question was built and maintained by the defendant, but was constructed practically for the sole accommodation of the complainant, since no other shipper could conveniently make use of it.

Held, (Prouty, C.), that although no demurrage should be charged where both the siding and the car were owned by the shipper, yet

where the siding was owned by the carrier, it might properly exact demurrage charges, even on private cars standing thereon.

No order issued.

536.—Enterprise Mfg. Co., et al. v. Georgia R. Co. 12 I. C. C. Rep. 451. (Oct. 8, 1907.)

Complaint of unreasonable rate on cotton goods from Southern mills to the Orient.

The rate in question was the same considered in *China & Japan Trading Co. v. Georgia R. Co.*, 12 I. C. C. Rep. 272, (504), in which the \$1.25 rate was approved. It appeared that the representatives of the various railroad and steamship companies competing for this traffic, had entered into agreements which, perhaps, were in violation of the Sherman Act:

Held, (Clements, C.), that in spite of the latter fact, the Commission found no reason to depart from its previous ruling.

Complaint dismissed.

537.—Farmers' Warehouse Co. v. Louisville & N. R. Co. 12 I. C. C. Rep. 457. (Oct. 8, 1907.)

Complaint of unreasonable rate on salt in carloads from New Orleans, La., to Cullman, Ala., and demand for reparation.

The rate in question was 22c. per 100 pounds. It yielded a considerably higher return per ton than the rates to surrounding points.

Held, (Clements, C.), (a) that on all the evidence, a 22c. rate was excessive to the amount of 2c., and should be reduced accordingly;

(b) that it did not follow that where the Commission finds that a rate is unreasonable it will order reparation on shipments previously made, and reparation would be refused except on shipments since the filing of the complaint.

Order accordingly.

At a later time, on proof of the amounts of shipments made since the filing of the complaint, the Commission issued an order directing the payment of the excess on such shipments. 12 I. C. C. Rep. 520.

538.—Thomas v. United States; Taggart v. United States. 156 Fed. 897; 84 C. C. A. Rep. 477; C. C. A. 8th Circuit. (Oct. 21, 1907.)

Error to D. C. U. S. W. D. Mo. (145 Fed. 74), on conviction under Rev. Stat., Sec. 5440, of conspiracy to commit an offense against the United States in securing rebates to certain shippers in violation of the Elkins Act, in connection with certain railroad officials.

The evidence showed that the defendants had arranged with one, Crosby, general freight agent of the Chicago, Burlington & Quincy R. Co., to be allowed large commissions on freight routed over this line by them from the Atlantic Seaboard to Kansas City, and that out of such commissions they paid part to certain favored merchants at Kansas City.

Held, (Adams, C. J.), that although in case of offenses requiring co-operation for their commission, the sole and necessary actors in the substantive offense are not liable to a charge of conspiracy by reason of its commission without the co-operation of outside parties, yet where the commission of such an offense is not limited to the necessary actors therein, but is induced or assisted by others, the latter are guilty of conspiracy under Sec. 5440.

Judgment reversed and new trial ordered, however, because of failure to instruct as to presumption of innocence.

539.—Wiemer & Rich v. Chicago & N. W. R. Co., et al. 12 I. C. C. Rep. 462. (Nov. 6, 1907.)

Complaint of unreasonable minimum carload requirements on shipments of hay from Ledyard, Iowa, to Minneapolis, Minn., and to Pekin, Ill.

It appeared that in a number of instances, defendants were unable to supply shippers with cars of sufficient size to load to the stipulated minimum.

Held, (Clements, C.), that where carriers have not sufficient equipment to furnish cars which would load to the prescribed minimum, such minimum stipulations are not reasonable.

Order directing the enforcement of modified regulations prescribed by the Commission.

540.—Cambria Steel Co. v. Great Northern R. Co. 12 I. C. C. Rep. 466. (Nov. 6, 1907.)

Complaint of unreasonable minimum carload requirement as applied to shipments of steel rails from Johnstown, Pa., to Seattle, Wash., and demand for reparation.

The tariffs under which these shipments were made provided for a minimum of 20 gross tons unless the capacity of the car was less, in which case the marked capacity of the car was to be the minimum, but in no case should this be less than 15 tons. By the rules of the car association, of which defendants were members, shippers were not permitted to load 60-foot rails on twin cars to a greater weight than 75% of the marked capacity of the cars, and under this rule it was impossible to load to the required minimum. While the case was pending, the rule was altered so as to make it comply with the other rules in force over Trunk Line territory, which were apparently satisfactory.

Held, (Clements, C.), that the rule in force at the time of the shipments, under which freight was assessed on a higher minimum than that which could be loaded, was unreasonable, and reparation of the excess would be awarded; but no order would be issued with reference to the rule as modified.

Order accordingly.

541.—Loup Creek Colliery Co. v. Virginian Ry. Co., et al. 12 I. C. C. Rep. 471. (Nov. 9, 1907.)

Application for establishment of joint through rates on coal and coke from Page, W. Va., to points outside the State.

Page was on the line of the Virginia R. Co., 9 miles from the junction point with the Chesapeake & Ohio R. Co. The latter road had coal rates the same from mines on its line in this district. The rate of the Virginia R. Co., to the junction point, was 10c. per ton. Complainant desired to have the same total rate from Page as from points on the line of the C. & O. The Va. R. Co. supported the complaint.

Held, (Clements, C.), (a) that the Act does not require the Commission to establish through rates in all cases where none exist, but merely empowers it to do so in proper cases;

(b) that the present was not a case where the public interest required a joint through rate;

(c) that a through rate over two lines need not be as low as a rate for the same service over but one line;

(d) that although a through rate should generally be less than the sum of the locals, this was not always the case, especially where it was over but two roads, one of which had a short haul.

Complaint dismissed.

542.—*Chicago, B. & Q. R. Co. v. United States*. 157 Fed. 830; C. C. A. 8th Circuit. (Nov. 8, 1907.)

Error to D. C. W. D. Mo., sustaining conviction for granting concession from established rates to certain packing companies on packing house products from Kansas City, Kas., to New York City, and Hoboken, N. J., destined for export.

(For additional facts, see *Armour & Co. v. United States*), (476.)

The shipments in question went on through bills of lading from Kansas City, Kas., to Christiana, Norway. From Kansas City to St. Louis they went via the Chicago, Burlington & Quincy R. Co., and from St. Louis to New York via the Toledo, St. Louis & Western R. Co., and its eastern connections. On June 17, 1905, the Burlington Co., having been notified by the packing companies that the proprietors of the Wilson Line of steamers had agreed to carry these products at 19 93-100c. per 100 pounds, and having secured from the Toledo, St. L. & W. R. Co. and its eastern connections an agreement not to increase the rate of 23c. per 100 pounds, then in force over such lines, until the end of the year, made an agreement with the packing companies to ship their products through to Christiana at 52 93-100c., this to include the 19 93-100c. ocean rate, and leaving 33c. for the haul from Kansas City to the seaboard. The rate of the C. B. & Q. from Kansas City to St. Louis then in force, does not appear, but it was presumably 10c. On July 25, 1905, the Toledo, St. L. & W. filed a new schedule, effective August 7th, increasing the rate from St. Louis to New York from 23c. to 35c. The Burlington Co. did not join in or file a concurrence in this rate, but it had in force the same rate over its own line through upper Mississippi points to New York over

the same eastern connections of the Toledo, St. L. & W. R. Co. At the date of the shipments in question (August 17th), the Burlington Co. had a rate in force from Kansas City to St. Louis of 13½c. on the products in question "when destined east of the Indiana-Illinois State line." The 35c. rate of the Toledo, St. L. & W. R. Co. was also in force at this date, but there was no through rate on file from Kansas City to New York or to Christiana, the sum of the rates to the seaboard on file at that time being 48½c. In pursuance of the contract of June 17th, the Burlington Co. received the freight at Kansas City, and sent it through to the seaboard at a rate of 33c.

Held, (Hook, C. J.), (after restating and affirming eight conclusions reached in the Armour case), (a) that in the absence of a through rate the legal charge was the sum of the local rates filed;

(b) that the defendant's contract with the Toledo, St. L. & W. R. Co. and its eastern connections was of the same nature as that of the defendant with the packing companies, and must yield to the subsequent increase in tariff rates.

Judgment affirmed.

Exception was also taken to the admission of tariffs of the C., B. & Q. to the coast by other routes. The Court said this did not injure defendant, but the Court did not discuss the relevancy of the tariffs on the principle of the Vacuum Oil case (468.)

543.—Laning-Harris Coal, etc., Co. v. Atchison, T. & S. F. R. Co. 12 I. C. C. Rep. 479. (Nov. 4, 1907.)

Complaint of unlawful switching charge on cars of grain brought to Kansas City by defendant and delivered by it there to connecting lines over the tracks of the Kansas City Belt Ry. (See also 548.)

The charge in question was for switching from defendant's rails over the tracks of the Belt Ry., and was paid over by defendant to the latter company. Complainant contended that the published rate to Kansas City included delivery at any point in Kansas City, whether on defendant's rails or not.

Held, (Clark, C.), that "in the absence of tariff specifications to the contrary the transportation rates shown in the carrier's tariffs to a given point are and always have been understood to include delivery to industries or unloading places located upon its own rails, and if consignee or owner of shipment orders it transported by another carrier to another place, he must expect to pay the lawful charge for that service."

Complaint dismissed.

544.—Fellows Coal & Material Co. v. Missouri Pac. R. Co. 12 I. C. C. Rep. 481. (Nov. 4, 1907.)

Complaint of unreasonable rate on coal from mines at Jewett, Kas., to Kansas City, Mo.

The rate complained of was 70c. per ton. Complainant relied almost entirely on a comparison with the ton-mile rates to Kansas City from

other points. It appeared that to change the rate in question would disturb the rates through a large competitive territory.

Held, (Clements, C.), that under the facts submitted, the records did not justify the Commission altering the rate in question.

Complaint dismissed.

545.—Missouri and Kansas Shippers' Ass'n. v. Missouri, Kas. & Tex. R. Co. 12 I. C. C. Rep. 483. (Nov. 4, 1907.)

Complaint of violation of Sec. 4 in charge on hay from Kansas points to Kansas City, Mo., higher than the rate through Kansas City to St. Joseph, Mo.

It appeared that the rate to St. Joseph was inadvertently higher than that to Kansas City, but this was a paper rate merely, no hay ever having been shipped to St. Joseph. On discovering the mistake, the carriers had immediately adjusted the rate.

Held, (Harlan, C.), (a) that the Commission was essentially an administrative body, and would examine into the real substance of the matters before it, unembarrassed by purely technical considerations;

(b) that the existence of a merely theoretical or paper rate was not sufficient to complete a violation of the long and short haul clause.

Complaint dismissed.

546.—Morse Produce Co. v. Chicago, M. & St. P. R. Co., et al. 12 I. C. C. Rep. 485. (Nov. 4, 1907.)

Complaint of unreasonable rate on butter and eggs from Granite Falls, Minn., to Chicago, compared with that from Pipestone, a more distant point, of preference of the latter point and of violation of Sec. 4.

Pipestone was a more distant point than Granite Falls, on the line of the Great Northern R. Co. It was also on a branch of the Chicago, Milwaukee & St. Paul R. Co., the branch of the latter road to Granite Falls being shorter. The rate from Pipestone was 43c., and from Granite Falls 56c.. No good reason appeared for the preference. The Great Northern R. Co. showed that it was forced to put in the 43c. rate from Pipestone by the competition of the C. M. & St. P.

Held, (Lane, C.), that the C. M. & St. P. should reduce the rate to Granite Falls to 43c.

Order accordingly, and as to other defendants, complainant dismissed.

547.—McLaughlin Bros. v. Adams Exp. Co. 12 I. C. C. Rep. 489. (Nov. 4, 1907.)

Complaint of unreasonable express rates on horses, in carloads, from New York to Kansas City and St. Paul, via Columbus.

The rate from New York to Columbus, where complainant was

engaged in buying and selling imported horses, was \$200; from New York to St. Louis, \$300; and from New York to Chicago, \$200. From Columbus to Kansas City the rate was \$250; from St. Louis to Kansas City \$150, and from Chicago to St. Paul \$200. The sum of rates from New York to Kansas City or to St. Paul via Columbus was, therefore, \$550, while the rate to Kansas City via St. Louis or to St. Paul via Chicago was but \$450. The rate per ton mile from Columbus to Kansas City and to St. Paul was 50% higher than from New York to Columbus, and the through rates from New York to Kansas City and St. Paul were \$400.

Held, (Lane, C.), that the rates west from Columbus to Kansas City and St. Paul were unreasonable, and should not exceed \$250.

Order accordingly.

548.—*Leonard, et al. v. Chicago, M. & St. P. R. Co.* 12 I. C. C. Rep. 492. (Nov. 4, 1907.)

Demand for reparation for alleged unlawful and unreasonable switching charge on coal in Kansas City taken by defendant to connecting line via the Kansas City Belt Ry. (See Laning, etc., Co. v. A. T. & S. F. R. Co.), (543.)

The \$3 charge in question had been absorbed by defendant until January 1, 1904, when it began to exact it, continuing so to do until June 12, 1905, when it again began to absorb it. It was claimed that the latter action amounted to an admission of its prior unreasonableness.

Held, (Clark, C.), that not every reduction in a charge by a carrier required it to respond in damages to the amount of the reduction in respect to previous shipments.

Complaint dismissed.

549.—*Santa Barbara Commercial Club v. Southern Pac. Co., et al.* 12 I. C. C. Rep. 495. (Nov. 4, 1907.)

Complaint of preference of Pacific Coast terminals over Santa Barbara in refusal to accord to Santa Barbara the same rates allowed such terminals.

It appeared that the harbor at Santa Barbara was not equal to that at San Diego, San Francisco, and the other large ports, and that all freight coming to Santa Barbara by water was transshipped at some other port.

Held, (Lane, C.), that the competition which secured for the larger ports the low competitive rates, did not exist at Santa Barbara, and that a higher rate to that point was, therefore, proper.

Complaint dismissed.

Channel Commercial Co. v. Southern Pac. R. Co., 12 I. C. C. Rep. 506, accord.

550.—*Coffeyville Brick Co. v. St. Louis & San Fran. R. Co., and Chicago, R. I. & Pac. R. Co.* 12 I. C. C. Rep. 498. (Nov. 11, 1907.)

Complaint of unreasonable rate on brick from Cherryvale, Kas., to Duncan, Ind. Ter., and demand for reparation.

At the time of the shipment in question, a joint through rate was in effect of 12c. per 100 pounds, and the combination of the local rates of the two defendants was but 11½c. At the hearing, however, defendants showed that their joint tariff had been reduced to 11½c., and offered reparation to the amount of ½c. on this shipment. Complainant stated, however, that the purpose of the petition was to secure a general rule that through rates should not exceed the sum of the locals.

Held, (Prouty, C.), that although the general rule was as contended for by the complainants, yet it was not an invariable rule and the Commission could make no general order in reference to it.

Order for establishment of the 11½c. rate and refund of ½c. on the shipment in question.

551.—Weleetka Light & Water Co. v. Fort Smith & W. R. Co. 12 I. C. C. Rep. 503. (Nov. 4, 1907.)

Application for a switch track.

The complainant's predecessor had had a switch connection with defendant's tracks, but on the failure of this company, the switch had been removed. It appeared that it was more convenient for complainant to have this switch connected so as to meet defendant's main track towards the south, but that this would be more dangerous owing to the fact that the most of defendant's traffic came from the south, and defendant preferred to have the switch meet the track in the other direction. It was not seriously disputed by defendants that complainant was entitled to a switch. The defendant offered to complete the connection if complainant advanced the cost and proposed to repay this cost out of allowances on freight charges on complainant's future shipments.

Held, (Harlan, C.), (a) that the switch connection should be ordered;

(b) that ordinarily the location of the switch would be left to the discretion of the carrier, and that in the present case the Commission would not prescribe the location unless the parties were unable to agree;

(c) that it was not in accordance with the principles of the Act to have a carrier purchase property by transportation, and the switch could not properly be paid for out of prospective freight rates, but in such a case, payment should be made out of available funds at definite intervals.

553.—Schwager, et al. v. Great Northern R. Co. 12 I. C. C. Rep. 521. (Dec. 6, 1907.)

Complaint of exaction of unreasonable and improper transfer charges on lumber shipments, and demand for reparation.

Complainant, in October, 1906, shipped two cars of lumber by de-

fendant from Avon, Washington, to Sawyer, North Dakota, a point on the "Soo Line." At this time, there was no joint through rate between these points and the rate in force was the sum of the two local rates of 40c. to Minot, North Dakota, the junction point with the Soo Line, and 4c. from Minot to Sawyer. The bill of lading, however, specified Sawyer as the destination, and was in the same form as that in which previous shipments had gone through to other points on the Soo Line. By reason of the shortage of cars, defendant had put in effect a regulation by which none of its cars should go off its own line, but this regulation was not in the published tariffs. Its observance necessitated a transshipment at Minot, and for this a charge was made of \$12.50 per car, which was collected from the consignee by the Soo Line. This charge was not specified in the published tariffs, and complainant had no notice of it or of the rule above referred to.

Held, (Clark, C.), that although the Act did not bar a carrier from charging costs of transfer in necessary transshipments to other lines, yet such charges must be reasonable and must be specified in the tariffs.

Reparation prayed for awarded.

554.—*Morgan, et al. v. Missouri, Kas. & Tex. R. Co., et al.* 12 I. C. C. Rep. 525. (Dec. 6, 1907.)

Complaint of unreasonable rate on live stock from points in Indian Territory to Kansas City, Mo., and demand for reparation.

The fact relied on by complainant was that from Crowder City, I. T., a point through which complainant's traffic had passed, the defendants had established a specially low commodity rate to Kansas City which, when combined with the local rate from complainants' shipping points to Crowder City, was less than the published through rate from such points to Kansas City. Defendants admitted the establishment of this low rate, but alleged that it was merely temporary rate, the result of strong competition. It appeared that during the period in question, some shippers had been allowed to ship at the combination rate, and others, who had shipped at the through rates, had been refunded the difference.

Held, (Clark, C.), (a) that a specific through rate is the lawful rate upon the through shipment, even where, by combination of local rates, a lower rate might be obtained;

(b) that although in such a case a shipper would have the undoubted right to consign to Crowder City and there assume possession of the shipment and re-ship it himself, yet the carrier or its agent might not lawfully act as forwarding agent for the shipper for the purpose of evading the law, and such would be an illegal device;

(c) that the original through rates from points of origin were not found to be unreasonable *per se*.

Complaints dismissed, but records referred to Department of Prosecutions.

(In this case, there is no discussion of the possibility of award-

ing damages on account of the discriminations which appeared in the testimony.)

555.—South Western Kas. Farmers' League v. Atchison, T. & S. F. R. Co. 12 I. C. C. Rep. 530. (Dec. 5, 1907.)

Complaint of unreasonable rates on coal in carloads from Colorado mines to points in Kansas, and preference of Hutchinson, Kas., and Ardmore, Oklahoma, by lower rates from said mines.

After reviewing the circumstances surrounding the traffic,

Held, (Clements, C.), that the rates were unreasonable and would be reduced to figures named.

Order accordingly.

556.—Hennepin Paper Co. v. Northern Pac. R. Co., et al. 12 I. C. C. Rep. 535. (Dec. 5, 1907.)

Demand for reparation for failure to route shipments of paper over the best route between Little Falls, Minn., and Boise, Idaho.

There were three available routes by which this shipment might have gone, over two of which the tariff rate was \$1.30, and over the third, via Butte, Mont., the tariff rate was \$2.17. During the winter of 1905 to 1906, complainant tendered six carloads of paper to be carried from Little Falls to Boise, without specifying the route. They were sent over the line via Butte. The Oregon Short Line participated in the actual transportation and offered to pay a part of the over-charge.

Held, (Clements, C.), (a) that damages would be awarded to the extent of the difference between the higher rate actually charged and the lower rate over the route by which the carrier was bound to have forwarded the freight;

(b) that as the Oregon Short Line had nothing to do with the mis-routing, and had actually transported the freight at its tariff rate, it could not properly be held responsible for or contribute to the reparation.

Order awarding reparation to complainant, said order to run against the Northern Pac. R. Co., without recourse by it to any other line.

557.—Leonard v. Missouri, Kas. & Tex. R. Co. 12 I. C. C. Rep. 538. (Nov. 18, 1907.)

Demand for reparation for over-charges on coal shipments.

The over-charges were alleged to have resulted from errors in weighing, complainants having paid the weights specified in the expense bills. The actual weights taken by one of the connecting carriers proved to be considerably less.

Held, (Prouty, C.), that the latter weights were correct and the over-charges should be refunded.

Order accordingly.

558.—Oregon Railroad Co. v. Chicago & Alton R. Co., et al. 12 I. C. C. Rep. 541. (Dec. 9, 1907.)

Complaint of unreasonable rates on denatured alcohol from Chicago and Missouri River points to North Pacific Coast terminals.

The rates on all kinds of alcohol were .85c. in carloads and \$1.25 in less-than-carloads. The rates on gasoline and similar commodities were 90c. in C. L., and \$2.20 L. C. L., while those on whiskey were \$1.25 C. L., and \$1.50 L. C. L., and on drugs, \$1.40 C. L., and \$1.90 L. C. L. It appeared that the Chicago alcohol could not compete with that manufactured in California unless the rates were practically nothing.

Held, (Clark, C.), that the rates were not shown to be either unreasonable *per se* or unduly prejudicial to complainants.

Complaint dismissed. .

559.—Pacific Purchasing Co. v. Chicago & N. W. R. Co., et al. 12 I. C. C. Rep. 549. (Dec. 2, 1907.)

Demand for reparation for alleged over-charge on shipments of brass bedsteads from Kenosha, Wis., to Los Angeles, Cal.

Defendant's tariff provided for a carload rate on iron and brass beds of \$1.65 per 100 pounds, with a minimum carload stipulation of 30,000. Complainants tendered a shipment of 32,780 pounds, but defendant did not then have on hand a car sufficiently large to take this amount. The shipment was, therefore, made in two smaller cars, with a notation on the through billing to the effect that two cars were used as one in this shipment. The delivering carrier, however, refused to accept this, and charged complainant at the rates applicable to shipments in 12,000 pounds minimum carload lots. This proceeding was to recover the excess over the rate which would have been charged under the 30,000 pound minimum requirement.

Held, (Lane, C.), (a) that where connecting lines published joint tariffs in which they held themselves out as prepared to transport commodities in carload lots of a certain minimum magnitude at a specified rate, such carriers might properly charge no more than that rate upon such carload, no matter what equipment they might provide for its transportation, except as the tariff, in specific terms, provided certain minimum weights for carloads in cars of certain lengths and capacities;

(b) that complainant was entitled to recovering the excess charges here imposed over the \$1.65.

Order accordingly.

560.—California Fruit Growers' Exchange, et al. v. Southern Pac. R. Co., et al. 12 I. C. C. Rep. 553. (Dec. 14, 1907.)

Complaint of unreasonable regulation governing distribution of cars for oranges in time of car shortage.

In the orange-growing region of California, there were in force

over the lines of the Southern Pacific and Santa Fe R. Co.'s two different methods of distributing cars in times of car famine. These were: First, the "house rule," under which the available cars were distributed on the basis of the amount of fruit picked and in the packing houses ready for shipment. This rule was advocated by the jobbers as against the growers. The other method was the "crop holding rule," under which the cars were distributed on the basis of the fruit on the trees. California oranges will keep on the trees for several months after ripening, whereas, if stored in packing houses, they will soon spoil. The use of the "house rule" required the growers in times of car shortage, to pick their fruit and store it in their packing houses without immediate prospect of being able to ship.

Held, (Lane, C.), that although the "crop holding rule" seemed the more equitable of the two, yet the Commission would not commit itself absolutely to the choice of either of these two rules for the present, it not appearing that the "house rule" was productive of undue discrimination.

No order issued.

561.—Memphis Freight Bur. v. Fort Smith & W. R. Co., et al.
13 I. C. C. Rep. 1. (Dec. 9, 1907.)

Complaint of unreasonable through rates from points on the Ft. Smith & Western Railroad, to Memphis, via Fort Smith.

The Fort Smith & W. R. Co. refused to participate in through business unless the connecting lines furnished the cars, or the shippers transhipped the freight at the junction, since its equipment was not more than sufficient for its own line. It also demanded its local rates as part of the through rates. It was being operated at a loss. By the filed tariffs, a discount in regular rates was allowed to shippers of cotton-seed products on the defendant's line. Under amended tariffs in force some of the through rates exceeded the sum of locals. The opinion is obscure and confusing, and it is difficult to determine the exact facts or decision. It would appear to have been

Held, (Clark, C.), (a) that although a carrier may properly offer lawful inducements to industries to locate on its line, it may not offer discriminatory privileges like that in this case;

(b) that defendant was particularly bound to make its equipment do its utmost in serving shippers along its own line;

(c) that although through rates ought to provide for services to be performed by the shipper, this should be stated in the tariff;

(d) that carrier serving an undeveloped territory might properly charge comparatively higher rates, and the Fort S. W. R. Co.'s charges were not unreasonable, but the through rates should not exceed the sum of the locals.

Order accordingly.

562.—St. Louis Traffic Bur. v. Missouri Pac. R. Co., et al. 13 I. C. C. Rep. 11. (Dec. 16, 1907.)

Complaint of unreasonable proportional rates on grain and grain products from St. Louis, Mo., to Little Rock, Ark.

These proportional rates were 18c. per 100 pounds on wheat and its products, and 15c. per 100 pounds on other grains and their products, and were applied to traffic which had been brought to St. Louis by railroads from points outside that city. The same rates applied from Kansas City, although the latter was considerably more distant. During the winter of 1906, on application of St. Louis merchants, the rates had been reduced to 11 and 9c., but had been put back to 18 and 15c., on the protest of the Kansas City shippers.

Held, (Prouty, C.), (a) that St. Louis should have lower rates than Kansas City;

(b) that these rates should be reduced to 13c. on wheat and 11c. on coarse grain.

In February, 1908 (13 I. C. C. Rep. 105), the Commission denied a rehearing in this case, but modified the findings so as to make the differential between Kansas City and St. Louis one cent. less, and prescribed a reconsignment rate of 14c. on wheat and 12c. on coarse grains.

563.—Chicago & M. El. R. Co. v. Illinois Cent. R. Co., et al. 13 I. C. C. Rep. 20. (Dec. 2, 1907.)

Application for through routes and joint rates.

Complainant's line ran parallel to that of the Chicago & North Western Ry. Co. and the Chicago, Milwaukee & St. Paul Ry. Co. within a short distance (from a few yards to 3 miles) of their tracks. These roads appeared to afford adequate service to the neighborhood, though neither touched the precise points from which complainant demanded through rates by from $\frac{3}{4}$ of a mile to 2 miles. Complainant had no refrigerator cars. These were necessary to ship cabbages, the principal product of the region, and complainant proposed to force the defendant to furnish them.

Held, (Harlan, C.), (a) that an electric railroad had the same rights and duties under the Act, as one operated by steam;

(b) that although a carrier might file a complaint to secure through routes and joint rates under Sec. 15, the purpose of this clause was to afford relief to shipping communities and not to aid carriers to acquire strategic advantages in their contests with one another;

(c) that where a satisfactory branch route existed in the territory or neighborhood in question, the Commission could not compel another, although no through route existed to the particular point.

Complaint dismissed.

564.—United States v. Central Vermont R. Co. 157 Fed. 291; C. C. S. D. N. Y. (Dec. 3, 1907.)

Demurrer to indictment for giving rebates in violation of the Elkins Act.

From the indictment it appeared that rebates on several shipments had been paid at one time by a lump sum, but it did not appear but that there had been but one payment.

Held, (Hough, D. J.), (a) that Sec. 1044 of the Revised Statutes, prescribing a three years limitation of actions, applied to all offenses against the United States, whenever any such were added by Congress to the list of statutory crimes, and the two years limitation of the New York Act was inapplicable;

(b) that although there could not be more penalties inflicted than there were payments made, yet, for convenience in pleading, it was proper to separate each shipment by describing it in a separate count.

Demurrer overruled.

565-A.—Kalispell Lumber Co. v. Great Northern R. Co. 157 Fed. 845; C. C. D. Mont. (Dec. 4, 1907.)

Bill for injunction to prevent enforcement of increased lumber rates from Flathead County points in Montana, to North Dakota points, until their reasonableness had been passed in by the Commission.

The complaint alleged that the rates were excessive and had been put in force in order to depress the value of timber, so as to enable a lumber company, owned by the defendant, to buy it cheaply. Defendant alleged that no application had been made to the Commission as yet, and that unless allowed to charge the rates in force under the new schedule, it could collect no rate at all.

Held, (Hunt, D. J.), that although a Court had no jurisdiction over an action for damages for charging an unreasonable tariff rate, it did have jurisdiction to restrain the enforcement of such unreasonable rates, pending the Commission's investigation.

Injunction granted, complainants to give sufficient bond to protect the railroad from loss.

565-B.—Great Northern R. Co. v. Kalispell Lumber Co., et al. 165 Fed. 25. C. C. A. 9th Cir. (Oct. 5th, 1908.)

Appeal from foregoing.

The new schedule of rates went into effect on Nov. 1, 1907, the bill was filed on Nov. 9, 1907, and the injunction granted December 4, 1907.

Held, (Gilbert, C. J.), (distinguishing *Northern Pac. R. Co. v. Pac. Coast Lumber Mfrs.' Ass'n.*, 165 Fed. 1), (726). that the court had no jurisdiction to enjoin the enforcement of rates after the same had gone into effect.

Injunction order reversed.

566.—**Milwaukee-Waukesha Co. v. Chicago, M. & St. P. R. Co., et al.** 13 I. C. C. Rep. 28. (Dec. 9, 1907.)

Complaint of defendant's refusal to allow mixed carload rates on beer and mineral water from Milwaukee, Wis., to western points. Complainant was the only shipper of both articles.

Held, (Knapp, Ch.), (following *Paper Mills Co. v. P. R. R. Co.*), (534), that defendant's action was not shown to be unlawful.

Complaint dismissed.

Clements and Lane, C. C., dissented.

567.—**Banner Milling Co. v. New York Cent. & H. R. R. Co.** 13 I. C. C. Rep. 31. (Dec. 16, 1907.)

Complaint of unreasonable rates on flour from Buffalo to New York and Boston of 2c. differential in favor of New York over Boston.

Held, (Prouty, C.), (a) that the differential was long standing and proper, and would not be disturbed.

(b) that in view of the recent advances in the rates in question, they were unreasonable and should be reduced.

Case held open for voluntary adjustment by defendant.

Thornton Milling Co. v. Delaware, L. & W. R. Co., 13 I. C. C. Rep. 37.

Washburn-Crosby Co. v. Erie R. Co., et al., 13 I. C. C. Rep. 38.

Washburn-Crosby Co. v. Lehigh V. R. R. Co., 13 I. C. C. Rep. 39. Accord.

On June 27, 1908, the Commission reconsidered the question involved in this case and adhered to its conclusions, issuing an order that defendants put in force, on flour and grain products from Buffalo, rates not exceeding 10c. to New York and New York points, 12c. to Boston and Boston points, and 12½c. to Sherbrooke points; 14 I. C. C. Rep. 398.

568.—**Washburn-Crosby Co. v. Pennsylvania R. Co.** 13 I. C. C. Rep. 40. (Dec. 16, 1907.)

Complaint of preference of Chicago millers over those in Buffalo by adjustment of rates to New York, Baltimore and Philadelphia.

From Chicago there was a differential of 2c. in favor of Philadelphia, and of 3c. in favor of Baltimore, while from Buffalo the differential was only half a cent as to both Philadelphia and Baltimore. The rates from Chicago were the result of competition.

Held, (Prouty, C.), (a) that the Chicago rates, being the result of competition, were proper;

(b) that the same reason did not exist for a similar differential from Buffalo, and it would not be ordered.

Complaint dismissed.

569.—**Kiser Co., et al. v. Central of Georgia R. Co., et al.** 158 Fed. 193; C. C. N. D. Ga. (Dec. 21, 1907.)

Bill for injunction to restrain the putting in force a proposed schedule of increased rates, on boots and shoes, from north and eastern points, to Atlanta, Ga.

The proposed increase amounted practically to 20c. per 100 pounds on an 85c. rate. It was to have taken effect on May 1st, 1905, but on the filing of the bill on April 29th, a temporary injunction had been granted.

Held, (Newman, D. J.), that a court of equity might properly enjoin carriers from establishing an unreasonable rate, at the same time leaving the matter in such shape that the Commission might ultimately determine whether the contemplated increase was just and reasonable.

Injunction granted, to remain in force a reasonable time, to allow complainants to present the matter to the Commission, this case to be stayed until a determination by that body as to whether the proposed increase was reasonable and what was a reasonable rate.

570.—Potlatch Lumber Co., et al. v. Spokane Falls & N. R. Co., et al. 157 Fed. 588; C. C. E. D. Wash. E. D. (Dec. 24, 1907.)

Bill to prevent enforcement of schedule of increased rates on lumber, recently put in force, pending an investigation of their reasonableness by the Commission.

The increased rates went into effect Nov. 1, 1907, and amounted to from 3 to 12½c. per 100 pounds, which was alleged to render them unreasonable and exorbitant. From the opinion it would appear that the rates were in effect prior to the hearing. The date of the filing of the bill does not appear.

Held, (Whitson, D. J.), that whatever might be the right of the court to enjoin the putting into effect of a schedule of rates prior to the date when they went into effect, the Courts could not enjoin their enforcement, after the 30 days had elapsed from the date of filing with the Commission.

Cause retained and further proceedings stayed pending the Commission's investigation.

571.—United States v. New York, C. & H. R. R. Co. 157 Fed. 293; C. C. S. D. N. Y. ((Dec. 31, 1907.)

Demurrer to indictment for granting rebates in violation of the Elkins Act.

The indictment charged that in 1898 defendant's agent agreed with a certain shipper to haul goods from Poplar Bluffs, Ia., to New York City at less than tariff rates and by means of rebates, paid during 1903 and 1904, this was in fact done. On these shipments the defendant was the delivering carrier, and the Missouri Pacific Railroad Co. the initial carrier. It was alleged that the Missouri Pacific R. Co. had filed the rates departed from, but not

that the defendant had done so, although it participated in the shipments.

Held, (Hough, D. J.), (a) that Sec. 1 of the Elkins Act sets forth two distinct offenses: First, the wilful failure to "file and publish the tariffs," or "strictly to observe the same," and, second, to . . . grant . . . any rebate . . . whereby any such property shall be transported at a less rate than that named in the tariff published and filed by such carrier," etc.;

(b) that in an indictment for failure to observe tariffs participation in a published rate was conclusive evidence against the road so participating, but did not render the participator liable to an indictment for giving rebates from tariffs filed by such carrier.

Demurrer overruled.

Affirmed on reargument.

572.—**United States v. Vacuum Oil Co.** (Three cases); **United States v. Standard Oil Co. of New York, et al.** (Four cases); 158 Fed. 536; D. C. W. D., N. Y. (Jan. 4, 1908.)

Demurrers to indictments for receiving rebates on shipments of petroleum from Olean to Norwood, N. Y., as part of through interstate shipments.

The indictments did not specify which route the traffic went by, nor that there were two routes. The latter was the fact. Nor did the indictment specifically allege that the unlawful rate had been actually paid.

Held, (Hazel, D. J.), (a) that the Act was not unconstitutional because depriving a shipper of the right to prove, in a criminal prosecution, the unreasonableness of the filed rate.

(b) that even though the Court took judicial notice of there being two routes, it was not necessary to allege by which route the freight went;

(c) that although the carrier making the concession operated solely within a single State, and though there was no allegation that the connecting lines had participated in the offense, since the concession was upon part of a through interstate shipment, it was covered by the Act;

(d) that actual payment of the unlawful rate was not essential, the offense having been *prima facie* consummated when the property was transported at the unlawful rate;

(e) that each shipment constituted a separate offense.

Demurrers overruled.

573.—**Miller Walnut Co. v. Atchison, Topeka & S. F. R. Co., et al.** 13 I. C. C. Rep. 43. (Jan. 6, 1908.)

Complaint of unreasonable rate on walnut lumber from Oklahoma City, Okla., to Galveston, Tex., for export.

The rate in question was 26¼c. for a distance of 552 miles, while the rate from Kansas City, where there were competing mills, was

but 18c. for 962 miles. The competitive conditions, however, at Kansas City were very different from those at Oklahoma. The Kansas City rate, since the hearing, had been raised to 21¾c.

Held, (Prouty, C.), that the 26¾c. was unreasonable, and should be reduced to 21¾c.

Order accordingly.

574.—Ocheltree Grain Co. v. St. Louis & S. F. R. Co. 13 I. C. C. Rep. 46. (Jan. 6, 1908.)

Demand for reparation for unreasonable rate on snapped corn from Lavery, Okla., to Texas points.

For some years prior to December, 1906, the rate on snapped corn had been 29 cents. On Dec. 12, 1906, it was raised to 36¾c., but reduced to 29c. again on Feb. 17th, 1907. During the period of advance, complainant made the shipments on which his demand was based.

Held, (Prouty, C.), that the fact of the long maintenance of the 29c. rate, and its reduction, after the advance, to that figure again, was in the nature of an admission on the defendant's part that the 29c. rate was a fair one, requiring explanation by the defendant, and in the absence of a satisfactory explanation, reparation would be ordered to the amount of the charge in excess of 29c.

Order accordingly.

See also 13 I. C. C. Rep. 238.

575.—Reliance Textile Works v. Southern R. Co., et al. 13 I. C. C. Rep. 48. (Dec. 2, 1907.)

Complaint of unreasonable rates on cotton piece goods from southern mills to Cincinnati, and from Cincinnati to Chicago, compared to combination rates to rival dye works in southern states, as constituting an undue preference of the latter.

Combination rates on Clearwater, S. C., and Lanette, Ala., were from 11c. to 12c. lower than those on Cincinnati, where complainant's mill was located. The southern rates were the result of competition with the New England mills and dye works. Certain of the rates to the southern dye works were intrastate.

Held, (Prouty, C.), (a) that a carrier cannot justify a discrimination in interstate rates by showing that part of one of the rates is for an independent intrastate shipment, where the intrastate rate is made voluntarily by the carrier, or even perhaps where required by a State law;

(b) that the rates from southern mills were the result of competition, not present in case of those in and out of Cincinnati, and this circumstance justified the existing relation.

Complaint dismissed.

576.—Bovaird Supply Co. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 56. (Jan. 13, 1908.)

Complaint of preference of Kansas City over Independence, Kas., in rates on rope cables from San Francisco.

The rate to Independence was 75c. per 100 pounds, and to Kansas City 60c. The latter rate applied to Missouri River points, and was to meet competition from the east. The 75c. rate was considerably less than any possible combination rate on Kansas City, either from the east or from the west.

Held, (Clark, C.), that in view of the competitive conditions at Missouri River points, the rates were proper.

Complaint dismissed.

577.—Powhatan Coal & Coke Co. v. Norfolk & W. R. Co., et al.
13 I. C. C. Rep. 69. (Jan. 14, 1908.)

Complaint of discrimination in car distribution in the Pocahontas coal district, by reason of the "coke-oven basis" of allotting cars.

This basis had been adopted in about 1885 by agreement with all the operators in the field. Under it each shipper received the same percentage of the cars allotted to this region as his coke ovens bore to the total ovens of all operators. When this system was adopted all mines were required by the land owners to build a certain number of ovens per acre of coal and defendant had also agreed to furnish 1½ cars for each oven. These conditions no longer held. Many new mines had no ovens and there were a number of arbitrary exceptions to the rule. Many mines, with a large number of ovens, had more cars than they could load. Ovens were expensive to build and not more than half those already built were in use.

Held, (Knapp, Ch.), (a) that the coke oven basis was not economical, was obsolete in this region, and should be discontinued;

(b) that it would be left to defendant to evolve an equitable basis of distribution.

Order accordingly.

578.—Pittsburg Plate Glass Co. v. Pittsburg C. C. & St. L. R. Co., et al. 13 I. C. C. Rep. 87. (Jan. 13, 1908.)

Complaint of unjust discrimination in favor of foreign plate-glass manufacturers over domestic ones, by through rates from foreign ports to points in the United States lower than domestic rates.

Through rates to points in the United States from Belgium, where most of the foreign plate-glass was made, were lower by 25% and upwards, than domestic rates for the inland part of the haul. This condition was the result of competition among the railroads for the foreign traffic, which forced them to offer great inductments to the steamship lines, to use the ports which they served. The domestic rates did not appear *per se* to be unreasonable.

Held, (Clements, C.), that under the Import Rate Case, since the low foreign rates were forced by competition, and the domestic ones

were not shown to be unreasonable *per se*, no violation of the Act appeared.

Complaint dismissed.

579.—**Eddleman, et al. v. Midland Val. R. Co.** 13 I. C. C. Rep. 103. (Jan. 13, 1908.)

Petition for order requiring the re-establishment of a certain station.

In December, 1906, defendant had removed its station at Elder, Okla., a point 9 miles west of Haskell, and 7 miles east of Bixby, and had substituted two other stations at points 2 and 4 miles east and west of Elder. There was need of two stations between Haskell and Bixby, and the public was better served by the present arrangement than by the one station at Elder. Complainant alleged that he had invested considerable money, relying on defendant's representation that its station at Elder would be maintained.

Held, (Prouty, C.), (a) that if complainant had a contract with defendant his remedy was in the courts, and not before the Commission, this body having no power to award damages for breach of contract;

(b) that no violation of the Act appeared.

Complaint dismissed.

580-A.—**Interstate Commerce Commission v. Harriman, et al.** 157 Fed. 432; C. C. S. D. N. Y. (Jan. 15, 1908.)

Application for order requiring respondents to answer certain questions.

Harriman was President and Director of the Union Pacific R. Co., and defendant Kahn, a member of Kuhn, Loeb & Co., which financed his roads. Both were asked about certain stock transactions between Harriman and other Directors and their roads, as to which it was claimed they made an unreasonable profit. Harriman was also asked if he bought stock during the two days before the U. P. dividend was increased. The investigation was voluntarily undertaken by the Commission to determine if any of the practices were such as tended to defeat the purpose of the Act.

Held, (Hough, D. J.), (a) that the Commission had power to institute an investigation such as this, of its own motion;

(b) that improvident expenditures by these roads, or unreasonable payments to their officers were clearly matters in which, under the Act, Congress and the Commission had an interest;

(c) that the power of Congress and of the Commission as regards investigation extended much farther than its power to legislate, and any matters incidental to or affecting interstate commerce were subject to its investigation;

(d) that the purchase of U. P. stock prior to the declaration of the dividend was not a matter having any relation at all to interstate commerce.

Kahn ordered to answer all questions and Harriman all but those as to the transactions in (d).

580-B.—Harriman v. Interstate Commerce Commission; Kahn v. Same; Interstate Commerce Commission v. Harriman. 211 U. S. 407. (Dec. 14, 1908.)

Appeals from foregoing.

The Commission contended that it might make any investigation that it deemed proper, not merely to discover facts tending to defeat the purposes of the Act, but to aid it in recommending any additional legislation relating to the regulation of commerce that it might conceive to be within the power of Congress to enact; and that in such an investigation it had power, with the aid of the Courts, to require any witness to answer any question that might have a bearing upon any part of what it had in mind.

Held, (Holmes, J.), (a) that "the main purpose of the Act was to regulate the interstate business of carriers, and the secondary purpose, that for which the Commission was established, was to enforce the regulations enacted;"

(b) that "the purposes of the Act for which the Commission may exact evidence embrace only complaints for violation of the Act, and investigations by the Commission upon matters that might have been made the object of complaint."

Order of C. C. reversed in first two cases and denied in third.

Day, J., with whom concurred Harlan and McKenna, J. J., dissented, being in favor of affirming the order of the Circuit Court.

Harlan, J., also dissented in the appeal by the Commission.

Moody, J., did not sit.

581.—Merchants' Coal Co. v. Fairmont Coal Co., et al. 160 Fed. 769; C. C. A. 4th Circuit. (Jan. 15, 1908.)

Appeal from decree of C. C. D. Md., enjoining appellant from prosecuting its petition against the Baltimore & Ohio R. Co., et al., before the Commission, to compel proper distribution of coal cars.

Appellant's mine was situated on the Cumberland & Connellsville or Pittsburg division of the B. & O. Railroad. The Piteairn Coal Co. had instituted mandamus proceedings to compel proper car distributions on the Monongah Division, where the same system of car distribution was in operation as on the Pittsburg Division. Appellant assisted the Piteairn Coal Co. in this suit, but had not agreed that it be a test case and subsequently petitioned the Commission to compel proper distribution of cars on its own division. In the latter case several issues were presented which were not involved in the mandamus proceedings.

Held, (Pritchard, C. J.), (a) that appellant, not being a party to the mandamus proceedings, was not bound or estopped by the decree entered in that case, especially as different issues were presented from those involved in the case before the Commission;

(b) that the remedy by mandamus under Sec. 23, was not exclusive, but cumulative, and the institution of mandamus proceedings did not prevent a concurrent petition to the Commission under Sec. 13.

Decree reversed.

582.—Forest City Fr. Bur. v. Ann Arbor R. Co., et al. 13 I. C. C. Rep. 109. (Feb. 4, 1908.)

Complaint of unreasonable classification of wire brushes and brooms.

These were in first class, with fine brushes. The material from which they were made were fourth class. They were much cheaper and less easily damaged than other brushes in first class, although sold in competition with them in some cases. Defendant contended that complainant Association was was not a proper complainant, since on appeal it could not be made to answer in costs.

Held, (Lane, C.), (a) that under Sec. 13 the complaint was properly brought by the present complainant;

(b) that the brushes in question should be carried third class. Order accordingly.

In another case between the same parties, (13 I. C. C. Rep. 118), it was held (Cockrell, C.), that wire coat hooks were properly placed in third class, no great difference in value or destructibility appearing between these and other third class commodities.

583.—Romona Stone Co. v. Vandalia R. Co. 13 I. C. C. Rep. 115. (Feb. 4, 1908.)

Complaint of unreasonable practice in charging on basis of marked capacity of cars of stone, in carloads, at points having no track scales.

In some cases it appeared that cars were loaded heavier and in some cases lighter than the marked capacity of the cars. These were supposed to be weighed in transit and the freight rate adjusted accordingly, but it appeared that often they were not in fact weighed and that shippers had difficulty in collecting excess charges.

Held, (Lane, C.), (a) that the Commission had power under Sec. 15 to order the discontinuance of this unreasonable regulation affecting rates, and to direct the observance of a reasonable substitute;

(b) that no charge should be made on these shipments, either on the basis of marked capacity or of carload minima, until the actual weight had been determined.

Order accordingly.

Romona Stone Co. v. Chicago, Indianapolis & Louisville R. Co., 13 I. C. C. Rep. 569. June, 1908. Accord.

584.—American Union Coal Co. v. Pennsylvania R. Co. 159 Fed. 278; C. C. E. D. Pa. (Feb. 7, 1908.)

Demurrer to statement claiming damages for discrimination and for a combination to restrain trade.

The first count of the statement alleged that plaintiff was charged tariff rates while his competitors, by means of a device, were allowed transportation for less than such rates. The other counts claimed treble damages under the Sherman Act, for charging unreasonable or excessive rates.

Held, (Holland, J.), (a) that in case rates filed with the Commission were unreasonable a shipper's only method of obtaining relief was by application to that body.

(b) that the statement presented a good cause of action under Sec. 2, though the rates exacted from complainant were those on file;

(c) that the facts did not show a violation of the Sherman Act.

Demurrer to second and third counts sustained; to first count overruled.

585.—**Manning v. Chicago & A. R. Co.** 13 I. C. C. Rep. 125. (Feb. 10, 1908.)

Petition by stockholder for investigation of the operation and accounts of a subsidiary road.

Held, (Knapp, Ch.), (a) that the Act did not confer on the Commission power to investigate the affairs of a railroad at the suit of a stockholder;

(b) that no violation of the Act or public necessity appearing, it would not undertake such an investigation of its own motion under the authority conferred by Sec. 12.

Order accordingly.

586.—**Minneapolis Threshing Machine Co. v. Chicago, R. I. & Pac. R. Co.** 13 I. C. C. Rep. 128. (Feb. 10, 1908.)

Complaint of unreasonable charge on shipment of threshing machines from Dallas, Tex., to Kansas City, Mo., and demand for reparation.

At the time the shipments were made, the published rate from Dallas to Kansas City was 72c. per 100 pounds, but the tariff provided that shipments which had paid the full rate one way, might be returned to the shipper at the point of origin at half rates, such return shipments not to be restricted to the line by which the original shipment was made. The machinery in question had been shipped from Hopkins, Minn., through Kansas City to Dallas, Tex., and was subsequently returned to complainant's branch warehouse in Kansas City. It was admitted that if returned to Hopkins, it would have been charged but 43¾c.

Held, (Knapp, Ch.), that a higher charge than 26c. on this traffic was unreasonable, and reparation would be awarded accordingly.

587.—**United States ex rel. Northwestern Warehouse Co. v. Oregon, R. & N. Co.** 159 Fed. 975; C. C. D. Oregon. (Feb. 24, 1908.)

Motion to quash petition for mandamus to compel proper distribution of cars for grain, and to prevent unjust discrimination therein.

Defendant had permitted warehousemen to erect grain elevators along its right of way. It adopted a rule requiring that all orders and requisitions for cars in which to make shipments of grain from these private warehouses must be made through the warehousemen. During the period of shortage relator had some 15,000 tons of grain stored therein, and attempted to secure cars for its shipment, but defendant refused these, relying on the above rule. From the petition it appeared that the warehousemen themselves were shippers of grain and had secured a number of cars for their own use.

Held, (Wolverton, D. J.), (a) that in making requisitions for cars under the above arrangement the warehousemen acted as the carrier's agent, and that if an unjust discrimination in car distribution resulted, defendant was responsible therefor;

(b) that defendant was bound either to change the above rule or to see to it that it was not permitted to operate so as to effect an unjust discrimination in favor of one shipper against another.

Motion overruled.

588.—*Smeltzer v. St. Louis & S. F. R. Co.* 158 Fed. 649; C. C. W. D. Ark., Ft. Smith Div. (Feb. 29, 1908.)

Motion to strike out paragraph in action at law for damages to goods in transit, such paragraph relying on Sec. 20, which provides that the initial carrier be liable for losses by connecting carriers in spite of stipulations to the contrary.

The loss in question occurred on an interstate shipment beyond defendant's line and the bill of lading distinctly limited liability to defendant's own line. The only question involved was the constitutionality of the provision in question.

Held, (Rogers, D. J.), that the provision did not violate the liberty to contract and was a proper exercise of the power of Congress to regulate commerce.

Motion overruled.

589.—*Laning-Harris Co., et al. v. St. Louis & S. F. R. Co.* 13 I. C. C. Rep. 148. (March 9, 1908.)

Complaint of unreasonable charge on hay in carloads from Kansas City and demand for reparation.

During December, 1906, January and February, 1907, defendant was short of cars for hay. Complainant desiring to ship hay, defendant offered stock cars, provided complainant clean and paper them at its expense, which complainant agreed to do and in fact did. He sought in this proceeding to recover the cost of so doing. The tariff did not provide for a service of this kind by the shipper.

Held, (Cockrell, C.), that even under Sec. 15 of the Act, giving authority to the Commission to make allowances to shippers for services, nothing would be here awarded to complainant.

Complaint dismissed.

590.—Laning-Harris Coal Co. v. Missouri Pac. R. Co., et al. 13 I. C. C. Rep. 154. (March 9, 1908.)

Demand for reparation on shipments of coal from Springfield, Ill., to Salina and Kipp, Kas.

The through joint rate on coal for the shipments in question was \$3.72 per ton, while the sum of the two local rates, via Kansas City, was \$3.50 per ton. The shipments in question were shipped to Kansas City, and after arrival there the cars were diverted to Salina and Kipp. The carriers charged the through rate of \$3.72 and complainant demanded back the 22 cents excess over the combined local rates.

Held, (Lane, C.), (a) that a through rate should not exceed combined local rates except under extraordinary circumstances;

(b) that these were strictly local shipments and should have proceeded at the \$3.50 rate.

Order accordingly.

591.—Wagner & Co. v. Detroit & M. R. Co., et al. 13 I. C. C. Rep. 160. (March 10, 1908.)

Complaint of discrimination in car supply for shipments of ice.

It appeared that at the time complained of there was an extensive car famine and that defendant's equipment was barely sufficient to handle traffic on its own line. Only two cars were given complainant's competitors for interstate shipments, and complainant desired to ship to points beyond defendant's line.

Held, (Knapp, Ch.), that no undue discrimination had been shown. Complaint dismissed.

592.—Stedman & Sons v. Chicago, N. W. R. Co., et al. 13 I. C. C. Rep. 167. (March 9, 1908.)

Complaint of unreasonable charge on potatoes from Wautoma, Wis., to Springfield, Mo., and demand for reparation.

Complainants, in shipping the three carloads of potatoes in question, expressly designated that they proceed by a route over which no through rate was filed, but over which the combination of the three locals was 38½c. per 100 pounds. By several other routes in which the same roads were the initial and delivering carriers as in that designated, there was a through tariff rate of 25c. per 100 pounds. After complainant discovered its mistake and while the freight was in transit, defendants were willing to protect the 25c., but were advised by counsel that they might not legally do so.

Held, (Prouty, C.), (a) that the law required defendants to collect the published rate in every case, and they had no option here but to charge the sum of the locals;

(b) that the Commission might not prescribe a through route and rate over the path of this shipment, since several satisfactory through routes already existed between the points in question.

Complaint dismissed.

593.—**Gentry v. Atchison, T. & S. F. R. Co., et al.** 13 I. C. C. Rep. 171. (March 9, 1908.)

Petition for the establishment of through route and joint rate on lumber from Ashland, Tex., to Nash, Okla.

It appeared that formerly there had been a through route and joint rate between these points, but that it had been discontinued owing to some disagreement between connecting carriers as to the division of the through rate.

Held, (Prouty, C.), that no satisfactory through route existing, the former rate should be established, but that its division should be left for the present to the voluntary adjustment of the carriers, no further order to be made until such adjustment proved impossible.

594.—**Pecos Mercantile Co. v. Atchison, T. & S. F. R. Co., et al.** 13 I. C. C. Rep. 173. (March 10, 1908.)

Complaint of unreasonable class rates from Chicago, St. Louis, Omaha and Denver to Pecos, Tex., and of preference of El Paso, Tex., a more distant point on the same line, by lower rates thereto, and of violation of Sec. 4.

It appeared that competitive conditions existed at El Paso which did not exist at Pecos.

Held, (Clements, C.), that in view of the competition at El Paso, the circumstances and conditions were dissimilar, and no violation of Sec. 4 or Sec. 3 appeared.

Complaint dismissed.

595.—**Ruttle, et al. v. Pere M. R. Co.** 13 I. C. C. Rep. 179. (March 2, 1908.)

Complaint of unjust discrimination in distribution of cars for hay at Carsonville, Mich.

Carsonville was on the Port Huron Division of defendant's line, 38 miles north of the junction with the main line. Scarcely any cars were allowed on this division to hay shippers, so several bought old cars and shipped hay in them to the main line, where there were enough available cars. Although these private cars were counted against the percentage of their owners, there were so few system cars that they had a great advantage, which more than made up for the extra expense of fitting the cars and transshipping.

Held, (Harlan, C.), that although the use of private cars was not *per se* unlawful, it was so where, as here, and it resulted in unjust discrimination.

Order withheld pending a voluntary adjustment by the parties.

596.—**Chickasaw Compress Co., et al. v. Gulf, C. & S. F. R. Co., et al.** 13 I. C. C. Rep. 187. (March 10, 1908.)

Complaint of rule requiring compression of cotton at nearest compresses under certain circumstances, but not under other alleged

similar conditions, resulting in discrimination against complainant's compress.

Complainant was interested in compresses at Ardmore and Paul's Valley, points north of Gainesville, Okla. By a rule of defendant's, cotton going either north or south from points between Gainesville and Purcell (north of Ardmore and Paul's Valley), might be compressed at either Gainesville, Ardmore or Paul's Valley, while cotton moving north from points south of Gainesville must be compressed at the nearest compress point. Practically all the cotton moved south.

Held, (Clements, C.), (a) that what complainant really sought was to have the Commission prescribe a rule requiring compression at the nearest point, and this the Commission had no power to do;

(b) that in case of south-bound cotton from points south of Gainesville, the Commission would not require defendant to allow compression at Paul's Valley and Ardmore and reshipment without additional charge for the back haul, merely because this was allowed as to Gainesville on the north-bound shipments originating north of Gainesville.

Complaints dismissed.

597.—*Coomes, et al. v. Chicago, M. & St. P. R. Co., et al.* 13 I. C. C. Rep. 192. (March 10, 1908.)

Complaint of unreasonable charge on broom corn from Elk City, Okla., to Sioux City, La., and demand for reparation.

The charge made was in accordance with the through tariff, but this was higher than the sum of the local rates on an intermediate point. Prior to the filing of the complaint the latter had been established as the through rate.

Held, (Clements, C.), (a) that the Commission had power to award reparation for excessive charges, although these were made in accordance with the published tariffs;

(b) that the through rate, being in excess of the sum of the locals, was to this extent *prima facie* excessive, and no evidence being offered by the defendant to explain it, reparation would be ordered to the amount of the excess.

Order accordingly.

598.—*American Asphalt Ass'n. v. Uintah R. Co.* 13 I. C. C. Rep. 196. (March 11, 1908.)

Complaint of unreasonable rates on gilsonite over defendant's line.

Defendant's road was built by the Barber Asphalt Co., to transport gilsonite, a substance used in the manufacture of asphalt. It was an expensive road to build and operate, and there was little traffic except gilsonite, which might at any time be superseded by other substances, making the road practically useless. The rate was 50 cents per 100 pounds, or \$10 per ton, for 54 miles. During past years the road had paid 7%, but was now doing better.

Held, (Prouty, C.), (a) that rates over a road constructed for a

special purpose and commodity like this were not to be tested by comparison with those over large industrial roads, but rather by the financial returns produced;

(b) that under the circumstances \$8 per ton was a proper rate. Order accordingly.

599.—**Haines, et al. v. Chicago, R. I. & P. R. Co.** (Nine cases.) 13 I. C. C. Rep. 214. (March 9, 1908.)

Complaint of unreasonable rates on coal between points in Indian Territory and Oklahoma and demand for reparation, on shipments made before Oklahoma's admission as a State.

Complainants alleged certain limitations in defendant's charter as having been exceeded. None of the rates complained of materially exceeded those approved in *Johnston v. St. Louis & S. F. R. Co.*, (469), for about the same service in the same region and in most cases were less than such rates.

Held, (Lane, C.), (a) that the Commission's function was to administer the Act to Regulate Commerce, its powers being limited by that Act as amended, and it had no authority to enforce contracts;

(b) that the Commission had no power to fix rates for the future within Oklahoma;

(c) that as no material difference in conditions appeared between the conditions here and in the *Johnston* case, that decision would be adhered to.

Reparation denied.

See also 13 I. C. C. Rep. 257.

600.—**Merchants' Traffic Ass'n. v. New York, N. H. & H. R. Co., et al.** 13 I. C. C. Rep. 225. (March 13, 1908.)

Complaint of unreasonable rate on cotton piece goods from New England points to Denver.

There was no through rate on the traffic in question nor any car-load rate. The unit on cotton piece goods east of the Rocky Mountains was the bale. The existing rate was \$1.79 per 100 pounds, being a combination on Chicago and St. Louis. No through route and rate was asked in the complaint. The rate to the Pacific Coast was \$1.50 and similar commodities were taken for 90c. and \$1.00.

Held, (Prouty, C.), that although the \$1.79 rate was unreasonable and should not exceed \$1.50, the proper method to obtain relief was in a proceeding to have a joint through rate established, when the Commission could apportion the rate among the various carriers.

Complaint dismissed without prejudice.

601.—**United States v. Williams.** 159 Fed. 310; D. C. N. D. Ala. S. D. (March 14, 1908.)

Motion to dismiss information charging defendant with aiding and abetting one unlawfully to travel on a free pass.

Defendant was an employe entitled to a pass. He received the pass and delivered it to one not an employe, who used it.

Held, (Hundley, D. J.), that although penal statutes were to be strictly construed, this principle must not be carried so far as to defeat the obvious legislative intent, and where a case came within the spirit of such a statute and within one reasonable interpretation of the letter thereof, it was sufficient, although there might be a possible literal construction which would not include the case.

Motion overruled.

602.—Raven Red Ash Coal Co., et al. v. Norfolk & W. R. Co. 13 I. C. C. Rep. 230. (March 16, 1908.)

Complaint of preference in rates on coal from Pocohontas-Tug River Coal Fields to Norfolk, Va., over those from Clinch Valley division points.

These two divisions joined the main line at Graham, W. Va., and were about equal in length. The rates from Pocohontas-Tug River points were \$1.50 per ton, while that from Clinch Valley points were \$1.00.

Held, (Lane, C.), that the differential did not appear justified either by cost or value of service, and the rates should be the same, but no reparation would be allowed.

Order accordingly.

603.—Amarillo Gas Co. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 240. (March 16, 1908.)

Complaint of unreasonable rate on coke from Trinidad, Col., to Amarillo, Tex.

The rate on both coke and soft coal had been \$3.35 per ton, but the latter had been reduced in January, 1907. Coke could be shipped as heavy in a car as coal, and the \$3.35 rate yielded a revenue considerably above the average.

Held, (Knapp, Ch.), that the coke rate should be reduced to \$2.90. Order accordingly.

604.—Little Rock. Fr. Bur. v. Midland Val. R. Co., et al. 13 I. C. C. Rep. 243. (March 16, 1908.)

Petition to establish through routes and joint rates on cotton-seed from points on the Midland Valley R. Co., in Oklahoma, to Little Rock, on the Chicago, Rock Island & Pacific Ry. Co.

In order to help the manufacturers on its own line, the Midland Valley R. Co. refused to join in a voluntary through routing arrangement.

Held, (Knapp, Ch.), that defendant's refusal was unjustified, and the required route would be ordered, allowing to both roads their local rates.

Order accordingly.

605.—Quimby, et al. v. Maine Cent. R. Co., et al. 13 I. C. C. Rep. 246. (March 16, 1908.)

Complaint of preference of shippers at points on defendant's main line by allowance of milling-in-transit privileges not available to complainants.

Complainants were located up a branch line with no market beyond, so that, although millers on the main line at Bangor and Lewiston, Me., could use the milling-in-transit privilege to advantage, complainants had to pay the local rate back to the market points. The tariff allowed wheat, etc., to be shipped from the mill with ground corn, on the milling-in-transit corn rate, and also provided that this rate be made by special arrangement.

Held, (Knapp, Ch.), (a) that complainant's disadvantage resulted from his poor geographical location, and the Commission could not remedy this;

(b) that the two items in the tariff above noted were improper and should be amended.

Complaint dismissed.

606.—Cedar Rapids & I. C. R. Co. v. Chicago & N. W. R. Co. 13 I. C. C. Rep. 250. (March 2, 1908.)

Petition for establishment of through routes and rates from points on complainant's line.

Complainant operated a modern standard gauge electric road 27½ miles long, joining defendant's tracks at Cedar Rapids. Defendant declined to join in the through routing arrangement, on the ground that complainant had no freight cars to exchange. Complainant's line was not parallel to any steam road, but at Iowa City the Chicago, Rock Island & Pacific R. Co. furnished adequate service.

Held, (Harlan, C.), that a through route should be established to and from points on complainant's line except Iowa City, with rates not to exceed 10% above defendant's Cedar Rapids rates (division of rates being left to the carriers unless they were unable to agree.)

Order accordingly.

607.—Wyman & Co., et al. v. Boston & M. R. Co., et al. 13 I. C. C. Rep. 258. (March 16, 1908.)

Complaint of advance in through rates from the Atlantic Coast to Chicago and western points.

This advance was 3c. per 100 pounds on first class, and 1½c., 1c. and ½c. on other classes of freight. The carriers sought to justify it on the ground that whereas previously the freight did not include insurance, under the new rate it did. The insurance included, however, was indefinite and clearly did not provide against perils of the sea, so that shippers had to take out additional insurance.

Held, (Prouty, C.), that if the insurance were broad enough to give complete protection, the rates would not be unreasonable, but unless this were done they should be reduced.

Order withheld.

608.—Cosmopolitan Shipping Co. v. Hamburg-Am. Packet Co., et al. 13 I. C. C. Rep. 266. (March 9, 1908.)

Complaint that defendants, all ocean steamship lines doing business with rail lines on through bills of lading, were pooling foreign traffic and otherwise violating the Act.

Held, (Lane, C.), (a) that the provision prohibiting pooling applied only to railroads;

(b) that in case of traffic to and from foreign countries not adjacent to the United States, the Act to Regulate Commerce and the power of the Commission extended only to the inland portion of the haul, and not to the ocean or water carriage;

(c) that the inland portion only of such through rates to foreign countries need be published and filed, but such inland portion must not vary even though the freight proceed on through bills of lading;

(d) that a "joint rate" under Sec. 6, could be made only by two carriers subject to the Act.

Complaint dismissed.

609.—Merchants' Traffic Ass'n. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 283. (March 16, 1908.)

Complaint of unreasonable rate on cameras, camera stands, bicycles and motor cycles from St. Louis to Denver.

During the pendency of the complaint, the rate on bicycles was reduced to the rates asked for. After reviewing the facts, it was

Held, (Prouty, C.), (a) that the rate on cameras was not excessive;

(b) that the rate on motor cycles should not exceed that on bicycles (1½ times first class L. C. L. and first class C. L.)

Order accordingly.

610.—Larsen Canning Co. v. Chicago & N. W. R. Co., et al. 13 I. C. C. Rep. 286. (April 6, 1908.)

Complaint of unreasonable rate on canned vegetables from Green Bay, Wis., to Washington, Ohio.

Complainant, under express routing directions, shipped these vegetables via the Chicago & North Western, the Pere Marquette and the Hocking Valley Railroads. There was no through rate filed over this route and the carriers charged 26½c. per 100 pounds, the sum of the local rates filed. By another route (the C. & N. W., Hocking Valley, and C. & M. V. Railroads) there was filed a tariff rate of 20c.

Held, (Lane, C.), that defendants had exacted the rates which they were legally bound to charge and these were not unreasonable *per se*.

Complaint dismissed.

611.—Duluth Com. Cl. v. Northern Pac. R. Co., et al. 13 I. C. C. Rep. 288. (April 6, 1908.)

Complaint of preference of shippers at interior points in allowance of free storage facilities at Duluth better available to such shippers than to merchants at Duluth.

Defendants, in accordance with tariff filed, allowed free storage at Duluth from the closing to opening of navigation, forwarding the stored freight, during the closed season, to destination at the balance of the through rate. At the opening of navigation the freight remaining stored was forwarded to points beyond Duluth at the balance of the through rate, but Duluth merchants were required to pay a switching charge for delivery to their warehouses. This was all the result of competition.

Held, (Lane, C.), that the practice, being the result of competition, was not illegal.

Complaint dismissed.

612.—Forest City Freight Bur. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 295. (April 6, 1908.)

Complaint of unreasonable rate and classification on multigraphs in less-than-carloads under the Western Classification.

These multigraphs were classed as double first class, with mimeographs and neostyles. The complainants insisted that they be classed second class, with printing presses. The weight and value of complainant's articles did not correspond either to mimeographs or to printing presses, but corresponded more nearly to typewriters.

Held, (Prouty, C.), that in Western Classification multigraphs should be classed $1\frac{1}{2}$ times first class, with typewriters.

Order accordingly.

613.—Field v. Southern R. Co., et al. 13 I. C. C. Rep. 298. (April 6, 1908.)

Complaint of defendants to establish party rate tickets for theatrical troupes.

Held, (Harlan, C.), (a) that the Commission had no power to require carriers to establish reduced passenger rates for particular purposes or occasions;

(b) that party rate tickets, where voluntarily offered by carriers, might not be confined to theatrical companies or similar organizations.

Complaint dismissed.

614.—Kentucky Railroad Commission v. Louisville & N. R. Co., et al. 13 I. C. C. Rep. 300. (April 6, 1908.)

Complaint of unreasonable rates between Owensboro and Henderson, Ky., and points in Trunk Line and Central Freight Association territory and of preference of Evansville, Ind., by lower rates to Evansville, through Owensboro and Henderson.

It appeared that the rates to Evansville were fixed by competition with other carriers. There was evidence to the effect that the

rates at Owensboro and Henderson were naturally competitive, but that the competition had been stifled by the agreement of the carriers.

Held, (Clements, C.), (a) that although the suppression of competition by the concerted action of the carriers would lead the Commission to scrutinize the rates in question with greater care, yet this fact alone was not conclusive evidence of the unreasonableness of the rates;

(b) that the competition at Evansville justified the relation of the rates in question;

(c) that the rates to Owensboro and Henderson did not appear to be unreasonable *per se*.

615.—Lykes S. S. Line v. Commercial Union, et al. 13 I. C. C. Rep. 310. (April 6, 1908.)

Complaint of violation of the Act by giving shares of stock as a bonus for traffic.

The Commercial Union operated a steamship line from Habana, Cuba, to Galveston, Tex., with through traffic arrangements with defendant railroads. It openly gave a certain number of the shares of its stock for each \$1000 of freight paid it, but discontinued this when defendant railroads learned of the practice and requested it to stop. The stock so issued was still outstanding and receiving dividends.

Held, (Cockrell, C.), (a) that the Commission had no jurisdiction over the ocean part of a shipment to a non-adjacent foreign country;

(b) that "adjacent" meant "contiguous" so as to permit practically continuous rail connection;

(c) that there was here no evidence that the defendant railroads had participated in the gifts of stock.

Complaint dismissed.

616.—Lincoln Commercial Club v. Chicago, R. I. & Pac. R. Co., et al. 13 I. C. C. Rep. 319. (April 6, 1908.)

Complaint of preference of Omaha over Lincoln in higher rates on coal, paving brick, cement, lumber, glass, salt, rice, egg-case fillers and sugar, from southern and western points.

Lincoln and Omaha were about the same distance from most of the points of origin in question, but the rates to Lincoln were, in general, higher. After reviewing the facts with reference to each commodity,

Held, (Prouty, C.), that the rate on coal might properly be 15c. per ton higher to Lincoln than to Omaha, and that on paving brick and cement, 1½c. higher, but that with respect to the other commodities, the rates to Lincoln should not exceed the rates to Omaha.

Order accordingly.

617.—Baer Bros. Co. v. Missouri Pac. R. Co., et al. 13 I. C. C. Rep. 329. (April 6, 1908.)

Complaint of unreasonable rate on beer from St. Louis, Mo., to Leadville, Col., and demand for reparation.

The rate in question was 95c. (for part of the shipment 90c.), per 100 pounds. This was made up of 50c. (for part 45 cents), from St. Louis to Pueblo, Col., by the Missouri, Pac. Ry. Co., and 45 cents from Pueblo to Leadville by the Denver and Rio Grande R. Co. The 95c. rate was in one case paid to the D. & R. G. Co., and in the other to the Missouri Pac. R. Co., under protest. All shipments were delivered to the Missouri Pacific agent at St. Louis, with instructions to send the freight through to complainants at Leadville via the D. & R. G. R. Co. beyond Leadville. Local way bills were used over each road, but the shipments were continuous and one carrier collected all the freight and settled with the other. Complainant had brought suit in the Circuit Court for damages, but had it dismissed after the decision in the Abilene Cotton Case (454.)

Held, (Prouty, C.), (a) that the second stage of the journey from Pueblo to Leadville, was subject to the regulation of the Commission, being part of a through journey;

(b) that the 45c. rate from Pueblo to Leadville was unreasonable by 15c.;

(c) that in order to recover back excess charges they need not be paid under protest;

(d) that the bringing of suit in the Circuit Court did not amount to an election, as complainant never had a right to proceed before that Court.

Order that the D. & R. G. R. Co. pay complainant on basis of 15c. per 100 pounds on shipments made.

618.—Hydraulic Press Brick Co. v. St. Louis & S. F. R. Co., et al. 13 I. C. C. Rep. 342. (April 6, 1908.)

Complaint of unreasonable rate on enameled bricks from St. Louis, Mo., to New Liberia, La., and demand for reparation.

The rate in question was 48c. per 100 pounds. In this territory any shipper belonging to a certain Weighing Association had his brick hauled at 5.8 pounds per brick, but as to other shippers the actual weight was taken by a rather inaccurate method. The tariff was confusing and full of cross references, agreements to protect combination rates, etc.

Held, (Clements, C.), (a) that the 48c. rate was unreasonable and should not exceed 30c.;

(b) that confusing tariffs, clear only to experts, tended to prefer large shippers, and were not in compliance with the Act;

(c) that reparation of excess charges over 30c. per 100 pounds would be ordered.

Order accordingly.

619.—Nebraska State Ry. Commission v. Union Pac. R. Co. 13 I. C. C. Rep. 349. (April 6, 1908.)

Complaint of unreasonable rates on coal from Rock Springs, and Hanna, Wyo., to Nebraska points.

These rates were \$4.50 and \$3.50 per ton respectively. The defendants maintained a blanket rate on coal to all points in Nebraska. After examination of the facts surrounding this traffic,

Held, (Clements, C.), that as to Omaha, the rates were not unreasonable, but there was no justification for a blanket rate to all points in Nebraska, and that as to nearer points, lower rates should be prescribed.

Order accordingly.

620.—Detroit Chemical Works v. Northern Cent. R. Co., et al. 13 I. C. C. Rep. 357, 363. (March 16, 1908.)

Complaint of unreasonable rate on iron pyrites from Baltimore, Md., and New York to Detroit, Mich., and demand for reparation.

The rate from Baltimore at the time of the shipments in question was \$2.72 per ton, and that from New York was \$3.32 per ton. These rates, although rather low, were in excess per ton mile of the average rates on commodities in the same general class. They had been largely increased in January, 1906, over what they had been for a long time before, and on January 1, 1907, were voluntarily reduced to \$2.21 and \$2.81.

Held, (Knapp, Ch.), that these rates were unreasonable to the extent of 51c. and reparation would be awarded on that basis.

Order accordingly.

621.—Hussey v. Chicago, R. I. & P. R. Co. 13 I. C. C. Rep. 366. (March 16, 1908.)

Demand for reparation on account of unreasonable rates on cross-ties.

The shipments in question were between April 25th and August 12th, 1907, and were from Barnett to McAlester. Both points were in what was then known as Indian Territory, but which, on Nov. 18th, 1907, was included in the new State of Oklahoma. The petition was filed prior to the latter date.

Held, (Clements, C.), that although the question of jurisdiction had not been raised by the parties, since lack of jurisdiction was apparent from the facts, the complaint should be dismissed.

Harlan, C., dissented.

622.—Re Demurrage Charges on Tank Cars. 13 I. C. C. Rep. 378. (April 13, 1908.)

Discussion of propriety of demurrage charges on cars on private tracks of owners and consignees and on tracks of carriers.

Carriers and shippers agreed that demurrage be exacted on private tank cars when standing on the railroad's tracks and not when

on the owner's private tracks, but disagreed as to cars on consignee's tracks.

Held, (Lane, C.), (a) that carriers should and must charge demurrage on all cars, private or not, standing on the carriers' own tracks, whether these were public tracks or sidings built for particular shippers and owned by the carrier;

(b) that no demurrage should be charged on such cars standing on tracks not owned by the carrier, since the carrier was here performing no service.

623.—Goff-Kirby Coal Co. v. Bessemer & L. E. R. Co. 13 I. C. C. Rep. 383. (April 14, 1908.)

Complaint of unreasonable rate on cannel coal and of failure to apply thereto the bituminous coal rate, and demand for reparation.

It appeared that cannel coal was a variety of bituminous coal, worthless for the manufacture of steam, but in extensive use for domestic purposes. It was more valuable than bituminous coal, but was sold in less quantities and was more widely distributed. The complaints were filed August 28, 1907, and referred to shipments made prior to June 29, 1906.

Held, (Prouty, C.), (a) that although, as a general rule, a somewhat higher rate might properly be charged on cannel coal than on bituminous, yet in the present instance, this coal should be taken at the bituminous rate;

(b) that the claims specified in the petition not having been presented within one year after August 27, 1906, when the Hepburn Act took effect, were outlawed;

(c) that it did not follow that because a rate was reduced for the future, damages would be allowed as to past transactions based on the new rate.

Order withheld for the present.

624.—Johnston & Larimer Co., et al. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 388. (April 14, 1908.)

Complaint of preference of Kansas City over Wichita in rates on cotton-piece and knit goods from the Atlantic Seaboard.

There were three routes by which this freight could be carried, the all-rail, the ocean and rail route, (via Norfolk or Savannah), and the Gulf route. By the all-rail route the rate to Kansas City was \$1.00 and to Wichita \$1.56, the latter being 10c. less than the combination rate on Kansas City; by the ocean and rail and Gulf routes the rate to Kansas City was 93c. and to Wichita \$1.36. By the Gulf route the freight went through Wichita to Kansas City, but the low rate to the latter was clearly forced by competition. As to knit goods, the differential against Wichita was 26½c., while the local rate from Kansas City to Wichita was 66c.

Held, (Prouty, C.), (a) that in view of the greater competition at Kansas City, no violation of Secs. 3 or 4 was shown;

(b) that the rates on knit goods to Wichita were not unreasonable;

(c) that the rate of \$1.36 on cotton-piece goods by the Gulf route was unreasonable and should not exceed \$1.25.

Order accordingly.

625.—Georgia Stone Co. v. Georgia R. Co., et al. 13 I. C. C. Rep. 401. (April 13, 1908.)

Demand for reparation on account of unreasonable minimum carload rule as to paving blocks.

During the period in which the shipments in question were made, there had been in force a reduced rate of \$3.10 per ton, with a stipulation that the carload minimum be the marked capacity of the car. Complainant always knew the weight per block and the number loaded and could always have got cars of any size from 40,000 to 100,000 pounds. Paving blocks could be loaded to double the marked capacity.

Held, (Clark, C.), that complainant was not entitled to reparation.

Complaint dismissed.

626.—Masurite Explosive Co. v. Pittsburg & L. E. R. Co., et al. 13 I. C. C. Rep. 405. (April 13, 1908.)

Complaint of unreasonable rate and classification of masurite.

This commodity was a high explosive, used for the same purposes as dynamite, and was classed as double first class in carloads, and as first class in less-than-carloads, the same as dynamite and other high explosives. It differed from dynamite, however, in that it was impossible to explode it without the aid of a detonation cap, so that for transportation purposes it was entirely safe to handle, and carried with it none of the risk attending the carriage of dynamite and powder.

Held, (Prouty, C.), that masurite should be carried at 1½ times first class in less-than-carloads, and second class in carloads.

Order accordingly.

627.—Missouri & K. Sh. Ass'n. v. Atchison, T. & S. F. R. Co., et al. 13 I. C. C. Rep. 411. (April 6, 1908.)

Demand for reparation for exaction of certain switching charges at Kansas City.

The four complaints in question were filed on Aug. 9th and 22nd, 1907, and claimed reparation on shipments prior to Aug. 28th, 1906. The complaints did not name the individual shippers demanding the reparation, or specify the shipments in respect to which it was claimed.

Held, (Harlan, C.), (a) that claims accrued two years prior to August 28th, 1907, were barred, unless complaint was filed prior to that date;

(b) that although a voluntary association such as the complainant might properly bring a complaint, no complaint by such an association "which fails to name the actual parties in interest on whose behalf reparation is demanded or which fails, in the petition itself or in some exhibit attached to it, to describe with reasonable particularity the shipments with respect to which damages are claimed, can be said under the Amended Act to state a cause of action. And the filing of such a complaint cannot stop the running of the period of limitation provided in the Act, since no cause of action, formal or informal, is alleged."

Complaints dismissed.

628.—*Howard Supply Co. v. Chesapeake & O. R. R. Co.* 162 Fed. 188; C. C. S. D. W. Va. (April 14, 1908.)

Action of assumpsit to recover alleged over-charges on shipments of cross-ties from Kentucky points to points in Virginia.

The complainant based his case on the fact that the rate on ties of 17c. per 100 pounds was higher than the rate on sawed lumber of 14c. per 100 pounds. In *Reynolds v. New York & P. R. Co.* (35), the Commission had held that rough lumber and railroad ties should be classed alike and charged the same rate.

Held, (Keller, D. J.), (a) that where a rate had been published and filed in accordance with the Act, the Courts had no jurisdiction to award damages for its exaction until it had been declared unreasonable by the Commission;

(b) that the decision by the Commission between other parties on another line of road that ties and lumber should be classed alike did not give the Courts jurisdiction.

Action dismissed.

630.—*Royal Coal & Coke Co., et al. v. Southern Ry. Co.* 13 I. C. C. Rep. 440. (April 13, 1908.)

Complaint of discrimination against complainant in method of distribution of cars for coal, and demand for reparation.

Under defendant's method of car distribution, individual and foreign railways fuel cars were treated as commercial cars, and counted against the cars allotted to the mine receiving them. Where, however, a given mine received company fuel cars, the tonnage of such cars was first deducted from the rating of such mine and the resulting figure used as the mine's rating in the distribution of the remaining cars.

Held, (Cockrell, C.), (a) that a carrier was not justified in manipulating car distribution so as to enable it to secure cheap fuel;

(b) that both individual and foreign and company fuel cars must be counted against the proportion allotted to the mine receiving them, and where a mine received fuel cars to the amount of its total pro rata share, it should receive no additional commercial cars;

(c) that the evidence of loss of profits being very indefinite, reparation would be denied.

Order accordingly.

631-A.—Traer v. Chicago & Alton R. Co., et al. 13 I. C. C. Rep. 451. (April 13, 1908.)

Complaint of discrimination against complainant in method of distributing cars for coal.

Under defendant's system of car distribution each mine was given a tonnage rating, but individual cars, company and foreign fuel cars were not charged against the share of the mine to which they were assigned.

Held, (Clark, C.), that although a carrier might furnish a mine, with which it had a fuel contract, with cars for such fuel in excess of that mine's rating, yet where the fuel cars furnished were less than such rated capacity the mine receiving them should receive commercial cars only to the amount of the difference between its rating and the individual and foreign and company fuel cars assigned to it.

Order accordingly.

631-B.—Chicago & Alton R. Co., et al. v. Interstate Commerce Commission. 000 Fed. 000. (Sept., 1908.)

Bill for injunction to restrain enforcement of the order of the Commission issued in the above.

Held, (Baker, C. J.), (a) that private cars, if accepted by an interstate carrier for use by it in transporting a commodity in commerce, must be treated as constituting a part of the carrier's available commercial equipment, and pro-rated in the same manner as company cars;

(b) that the private cars of shippers doing a purely intrastate business must be counted as a part of the available commercial equipment, otherwise intrastate shippers might be favored at the expense of those making interstate shipments;

(c) that foreign fuel cars must be counted as part of the available commercial equipment of the carrier serving the mines which received them;

(d) that company fuel cars, belonging to the defendant company, and employed in hauling its own fuel coal, need not be counted against the pro-rata share of the mines receiving them, but shipments in such cars should not be taken into consideration in arriving at the capacity of the mines to tender coal for transportation.

Decree accordingly.

632.—Cardiff Coal Co. v. Chicago, M. & St. P. R. Co., et al. 13 I. C. C. Rep. 460, 471. (April 6, 1908.)

Petition by shipper for through route and rates.

Complainant's mine was reached by the lines of the defendants,

the Wabash and the Chicago, Indiana Southern Railroad Companies, which connected with the Chicago, Milwaukee & St. Paul Railroad, the principal defendant. The latter road had allowed through routing and rates to complainant's mine until recently, but had now discontinued this. Its reason was that the industries at the points which complainant desired to reach could be adequately served by mines along its own line, giving it longer hauls and greater revenue. The other defendants were willing to enter into the arrangement, and the C., M. & St. P. allowed through routing to points near complainant's mine.

Held, (Harlan, C.), (a) that the defendant's refusal to allow the through route in question was not justified by the fact that it was to its interest to keep complainant's coal off its line;

(b) that to require this through route would not give the connecting lines the use of the tracks and terminal facilities of the C., M. & St. P. R. Co.;

(c) that no reasonable and satisfactory through route to the desired points now existed;

(d) that the exercise of the Commission's power to prescribe a through route was here necessary to prevent discrimination in favor of competing mines having through rates;

(e) that the Commission could establish a through route between the Chicago, M. & St. P. R. Co., and but one of the other defendants.

Order accordingly.

633.—Chandler Cotton Oil Co. v. Fort Smith & W. R. Co. 13 I. C. C. Rep. 473. (April 18, 1908.)

Complaint of unreasonable rates on cotton seed from Prague, Okla., to Warwick, Okla., and demand for reparation on shipments between Nov. 1st, 1906, and April 1st, 1907.

Oklahoma was admitted as a State on Nov. 16th, 1907, and the complaint was filed on Oct. 17th, 1907.

Held, (Clark, C.), (a) that it was the duty of the Commission of its own motion to deny jurisdiction wherever this appeared from the facts;

(b) that the Commission had no power to award the reparation prayed for.

Complaint dismissed.

634.—Kindel v. Adams Express Co., et al. 13 I. C. C. Rep. 475. (April 14, 1908.)

Complaint of unreasonable rates on express matter to and from Denver.

This proceeding covered the whole system of express rates. These rates were constructed on a "graduate scale," with given base rates. Rates from the east to Denver were combination rates on Missouri River points with the graduate scale applied, so that the base rates from Omaha to Denver, and from Denver to Ogden, practically con-

trolled the whole rate situation. In small packages, of such size as to compete with the United States mail, and not with freight transportation, the rate scarcely increased at all with the distance, while on larger packages, even under the graduate scale, it amounted practically to the sum of the rates to and from the Missouri River. In recent years defendant's expenses had increased, but although business west of the Missouri River had grown considerably, the rates applicable thereto, originally high because of scarcity of business, had not been reduced.

Held, (Prouty, C.), (a) that since the express business required comparatively little capital and risk, express rates could not be tested on the same basis as freight rates;

(b) that comparison of rates was especially valuable in case of express rates, since the circumstances did not vary as much as in case of freight;

(c) that the low rates on small packages for long distances did not unduly prejudice the traffic in large packages or prove the same unjust by reason of the competition with the mails;

(d) that the base rates from Omaha to Denver, and from Denver to Ogden were unreasonable, and should be reduced from \$4.00 and \$4.25 to \$3.50 and \$4.00.

Order accordingly.

635.—Frye & Bruhn, et al. v. Northern Pac. R. Co., et al. 13 I. C. C. Rep. 501. (April 14, 1908.)

Complaint of unreasonable rate on live hogs from Missouri River points to Seattle, Wash., and of failure to establish reasonable rates on live hogs in double deck cars, and demand for reparation.

Complainants were packers at Seattle, shipping hogs from Missouri points and points on branch lines thereabouts. The rate complained of was \$170 per 36 foot single deck car. From branch line stations the local rate was added. Except for comparatively short periods the \$170 rate was the lowest ever in force. It appeared, however, that complainants had in the past been receiving rebates, making the actual rate paid by them but \$148.36. Complainants were satisfied with a \$261 rate for double deck cars, which was exactly equivalent per 100 pounds to the \$170 rate on single deck cars, except that the double deck cars were less injurious to the hogs. There was no regular return loading for such cars, however, and defendants had never used them to this locality, except for short periods. The relation of rates between hogs and their products was normal and more favorable to hogs than in the past. Complainant's business had greatly increased during the past few years, while shipments in products had not.

Held, (Harlan, C.), (a) that by comparison with other similar rates (the best test of rates on a given commodity), and in view of the results of the present rate on complainant's business, the \$170 rate was not unreasonable;

(b) that although in testing the reasonableness of a given rate, net rates charged to other shippers receiving rebates might possibly be taken into consideration, yet rebates to the complainant could not be considered;

(c) that defendants could not reasonably be required to use double deck cars in this traffic;

(d) that defendants should probably absorb the local rates on branch lines and place all shipping points in one group in the Missouri River region, but no order would be issued requiring this;

(e) that reparation on account of excess rates would be denied, except as to 10 cars shipped under a \$240 rate;

(f) that reparation on account of loss of profits during periods of prohibitive rates would be denied, as too indefinite.

Order accordingly.

636.—United States v. Wells Fargo Express Co., et al. 161 Fed. 606; C. C. N. D. Ill. (April 22, 1908.)

On final hearing of petition to restrain giving of express franks to officers.

The franks allowed the officers of the express companies, and the officers of the railroads, were used by them to have their personal packages carried free of charge, but this did not include business consignments.

Held, (Kohlsaatt, C. J.), (a) that prior to the Amendment of 1906, express companies were not subject to the Act, but since that Amendment they were subject thereto to the same extent as though named in the original Act;

(b) that unless within the enumerated exceptions, the giving of passes was a violation of Secs. 2 and 3, of Sec. 6, and of the Elkins Act;

(c) that express franks were not passes, the latter being restricted to passengers, and not sanctioned by the proviso in Sec. 1 or Sec. 22;

(d) that the transportation of the personal packages of officers of express and railroad companies was commerce;

(e) that the use of the word "discrimination" in the Elkins Act without the adjective "unjust," did not broaden the original provisions, the word "discrimination" itself connoting injustice;

(f) that it was illegal to allow express franks to the officers of railroads or express companies.

Order accordingly.

637.—Bannon v. Southern Express Co. 13 I. C. C. Rep. 516. (May 4, 1908.)

Complaint of unreasonable express charges on fish in barrels and tubs from Haines City, Fla., to St. Louis, Mo., and demand for reparation.

The basis of the complaint was that some years prior to September, 1906, the defendants had permitted complainant to load con-

siderably more than 200 pounds of fish to the barrel, although the latter was the amount specified in the tariffs on which the charge per barrel was based. From that date, however, defendants insisted upon the strict observance of the tariff, which increased the rate that complainant had to pay. The complainant contended that the tariff rate had been increased, but this charge was not sustained by the evidence.

Held, (Clark, C.), that an increase in an actual charge due solely to the observance by the carriers of tariffs, formerly disregarded, did not form a basis for reparation on the ground that the actual charges made were unreasonable.

Complaint dismissed.

638.—**Koch Secret Service v. Louisville & N. R. Co.** 13 I. C. C. Rep. 523. (May 4, 1908.)

Complaint of discrimination in refusal to sell party rate tickets to defendant's employees, while allowing such to theatrical companies and similar organizations.

On three occasions complainant sent parties of 16, 22 and 18 men over defendant's line between Nashville, Tenn., and Evansville, Ind., and paid under protest \$5 per man. On another occasion 10 men presented themselves for transportation, but on defendant's refusal to allow a party rate, only nine single tickets were bought and only nine men travelled. Defendants published and filed a \$3.50 rate applicable to parties of 10 or more bona fide members of theatrical troupes, base ball teams and similar organizations.

Held, (Clements, C.), (a) that as to the three parties of more than 10 each, complainant was entitled to reparation at \$1.50 for each fare paid;

(b) that as regards the party of 9 no damages would be awarded, since the Commission could only award reparation on account of unjust discrimination which was "actual and in fact accomplished."

Order accordingly.

639.—**MacMurray v. Union Pac. R. Co.** 13 I. C. C. Rep. 531. (May 4, 1908.)

Demand for reparation on account of alleged discrimination in car distribution.

Complainant was a grain dealer at Wood River, Neb. During November and December, 1906, there was a great scarcity of cars, and defendant was unable to supply the shippers with cars, but it appeared that during this period, the complainant had received a fair share.

Held, (Clements, C.), that no discrimination had been shown. Complaint dismissed.

640.—**Reynolds v. Southern Express Co.** 13 I. C. C. Rep. 536. (May 4, 1908.)

Complaint of unreasonable express rate on cream from Columbia, Tenn., to Jacksonville, Fla.

The rate in question was \$3.90 per 10 gallons, including the tub in which the cream was shipped together with the necessary ice, and including the return of the empty tub. It appeared that the defendant company had a contract with the Louisville & N. R. Co. under which it agreed not to charge less than a certain percentage over the railroad's freight rate on the same commodity between the same points. It also agreed to pay the railroad a certain per cent. of its gross earnings. A rate of 15c. per gallon had been in force from 1900 to 1907.

Held, (Clements, C.), (a) that the existence of contract between the express company and a railroad that the rates of the latter should exceed those of the former by a certain percentage, was no justification for unreasonable charges by the express company;

(b) that the rate in question was unreasonable and should be reduced to \$2.75.

Order accordingly.

641.—*Benton Transit Co. v. Benton Harbor, St. Joe R. & L. Co.* 13 I. C. C. Rep. 542. (May 11, 1908.)

Petition by water line for through route and rates.

Complainant operated a steamship line from Benton Harbor, Mich., to Chicago. Defendant's railway tapped the fruit district around Benton Harbor, its line being wholly within the State of Michigan. Prior to 1907 defendant had a through routing arrangement with both complainant and the Graham & Morton Line, but after 1906 discontinued the former. On December 13th, 1907, it filed a schedule suspending its arrangement with the Graham & Morton Line, but this was renewed with the opening of navigation in March and was in operation when this case was heard. The complaint was filed on December 14th, 1907. The facilities of the Graham Line were adequate, except as to its wharves at Chicago, which were not in such condition as to give the best service.

Held, (Harlan, C.); (a) that the mere suspension of the arrangement with the Graham Line did not destroy the jurisdiction of the Commission or make a new complaint necessary;

(b) that the route with the Graham Line was not reasonable or satisfactory, and the establishment of the route requested would be ordered.

Order accordingly.

642.—*Re Released Rates.* 13 I. C. C. Rep. 550. (May 14, 1908.)

Discussion by the Commission of the Sec. 20 dealing with the liability of carriers.

The views of the Commission on this question are summarized in Sec. 262 of the text. The Commission also stated that an increased charge of 20%, where the carrier's liability was unlimited, over that

exacted in case of limited liability, was manifestly out of proportion to the larger risk involved, and was unreasonable, although some increased charge in such a case would be proper.

643.—Marshall Michel Grain Co. v. Missouri Pac. R. Co. 13 I. C. C. Rep. 566. (June 1, 1908.)

Complaint of unreasonable rate on bran, milled in transit, from Smolen and Falun, Kas., to Little Rock, Ark., and demand for reparation.

Defendant's tariff provided for rates on wheat and products thereof from Smolen and Falun to Kansas City, of 15c. and 15¼c. per 100 pounds. At the same time there was in effect a proportional rate on bran from Kansas City to Little Rock of 12¾c., but the tariff specified that these proportional rates should not have the effect of reducing through rates from original points of shipment. The through rate from Smolen to Little Rock was 32c., and from Falun to Little Rock, 30¾c. The complainant was charged 32c. in each case.

Held, (Knapp, Ch.), (a) that the proportional rates were inapplicable to the present case, the proper rates being 32c. from Smolen and 30¾c. from Falun;

(b) that owing to the error in charging 32c. on the Falun shipment, defendant should refund 1¼c. on the latter shipment, amounting to \$8.04, but this charge being made in excess of the published rate, should be refunded without any order.

Order accordingly.

644.—MacBride Coal Co. v. Chicago, St. P., M. & O. R. Co. 13 I. C. C. Rep. 571. (June 3, 1908.)

Complaint of defendant's action in refusing to deliver freight without payment of demurrage charges, and demand for reparation.

Complainant shipped 7 carloads of coal from Marion, Ill., to himself at Minneapolis, Minn., these cars arriving over defendant's line between March 4th and 18th. On April 6th, defendant was advised that the cars had been sold and their delivery to the consignee was requested. Defendant refused to deliver without payment of freight and demurrage charges, the latter covering a period after the disposal orders were given to the railroad. The freight was subsequently sold, after demurrage charges had further accumulated, and the complainant was tendered the balance.

Held, (Lane, C.), (a) that the record showed no unjust discrimination against complainant or unreasonable rates or charges;

(b) that if complainant's contention was that the demurrage charges did not constitute a lien on his property, and if defendant's action amounted to a conversion, his suit should have been brought before a court of competent jurisdiction, as the Commission's sole function was to enforce the Act to Regulate Commerce.

Complaint dismissed.

645.—*Leonard v. Kansas City Southern Ry. Co., et al.* 13 I. C. C. Rep. 573. (May 12, 1908.)

Complaint of unreasonable rate on coal from Arkansas mines to Westport, Mo., and demand for reparation and for the establishment of a through route and reasonable joint rate applicable thereto.

Complainant's coal yards were located at Westport, Mo., which was formerly a distinct town, but at the time of the filing of the complaint, it was part of Kansas City, Mo. Defendant, the Kansas City & Westport Belt Ry. Co., extended from Westport to Dodson, Mo., a distance of 9 miles, of which $1\frac{1}{2}$ miles were within and the balance without the limits of Kansas City. The defendant, the K. C. S. Ry., ran through Dodson to Kansas City, and published a rate on coal of \$2 per ton from Arkansas mines to both Kansas City and Dodson. This tariff provided for the absorption of switching charges of connecting lines to which delivery was made within the Kansas City limits, to the amount of \$3 per car. Dodson was not within such limits. There were two lines by which complainant's yards could be reached. The first was by the K. C. S. Ry. Co., to Kansas City, and from there back to Westport, but the terminus of this line was $1\frac{1}{2}$ miles from complainant's yard and was entirely impracticable for him to use. The other line was over the K. C. S. to Dodson and from there over the Belt Ry. direct to complainant's yards. The complainant had always shipped and proposed to ship in future over the latter route. The Belt Ry. charged 20c. per ton for the switching service and in addition to this, he was required to pay the regular \$2.00 rate to Dodson; whereas, if he had shipped by the other route, connecting within the Kansas City limits, the K. C. S. would have absorbed the shipping charge. His coal went through on through bills of lading, but except for this fact, the Belt Ry. and the K. C. S. Ry. were operated as distinct lines, there being no connection between them. The Belt Ry. Co. was an electric road engaged mainly in the handling of passengers, having no freight cars and doing no general freight business. The principal question discussed by the Commission was whether it had jurisdiction to prescribe a through route and joint rate for this service.

Held, (Prouty, C.), (a) that assuming that the two defendants here had not voluntarily submitted themselves to Federal control, nevertheless the Commission had jurisdiction, since under the amended Act its authority over traffic wholly by rail was determined not by the volition of the carriers or by the nature of the arrangement between them, but by the character of the transportation in which they engaged;

(b) that "a route cannot be called satisfactory unless it reasonably accommodates traffic which is entitled to accommodation" and no satisfactory through route here existed available to complainant;

(c) that the existence of a through route to one part of Kansas City did not preclude the Commission from ordering such to another part of the same city;

(d) that joint through routes and rates ought not to be forced upon carriers unless there was some substantial reason for it, and owing to the character of the Belt Ry., a through via Dodson would not be ordered at the present time;

(e) that the tariff of the K. C. S. Ry. Co. should be modified so as to reduce the freight \$3.00 per car when carried to a point on the Belt Ry. within the switching limits of Kansas City (this covering complainant's traffic), this requirement to continue only so long as the K. C. S. Ry. Co. absorbed switching charges at Kansas City.

No order issued, although defendant proposed to refund \$3.00 a car upon previous shipments.

Harlan, C., concurred, on the ground that the roads here were parties to a common arrangement by reason of the existence of the through bills of lading. He did not concur with the position of the Commission that it had the power to subject the carrier to the Act and to its jurisdiction against the latter's will, holding that unless there was a common arrangement, the transportation was not "wholly by rail" since "merchandise cannot move itself at junction or transfer points."

Chairman Knapp and Commissioner Clark concurred in his opinion.

646.—*Meeker, et al. v. Lehigh V. R. Co.* 162 Fed. 354; C. C. S. D. N. Y. (June 6, 1908.)

Demurrer to action by a shipper to recover treble damages under the Sherman Act, by reason of alleged conspiracy to charge excessive rates on coal from mines in Pennsylvania to tidewater at Perth Amboy, N. J., and to New York.

The only damages which the complaint specified were alleged to have resulted from the exaction of excessive rates. The rates charged were those published and filed in accordance with the Act.

Held, (Ray, D. J.), (a) that the Sherman Act did not declare excessive rates illegal and must be construed in connection with the Act to Regulate Commerce;

(b) that the latter Act dealt specifically with rates, and that where the tariff rates had been charged, neither State nor Federal Courts had jurisdiction to award damages for excessive charges until the Commission had declared the rates unreasonable, even though the excessive rates were alleged to result from an illegal conspiracy and combination.

Demurrer sustained.

647.—*Majestic Coal & Coke Co. v. Illinois Cent. R. Co.* 162 Fed. 810; C. C. N. D. Ill. E. D. (June 25, 1908.)

Motion to dissolve temporary injunction, and demurrer to bill to restrain defendant from including private and foreign fuel cars in estimating complainant's share of defendant's system cars.

In the past complainant had been allowed its pro-rata of system

cars without counting the private and foreign fuel cars which it had employed for intrastate shipments. This complaint was inspired by defendant's refusal to continue this method of computation and by its insisting on counting the intrastate cars as part of defendant's share.

Held, (Kohlsaat, C. J.), (a) that the principal intent of the Act was that railroad companies should not extend any undue advantage to any shipper;

(b) that the private and foreign fuel cars used in intrastate shipments should be counted as part of complainant's share.

Demurrer sustained, bill dismissed, and temporary injunction dissolved.

648.—New Albany Furniture Co. v. Mobile, Jackson & Kansas City R. Co., et al. 13 I. C. C. Rep. 594. (June 2, 1908.)

Complaint of unreasonable rates on furniture from New Albany, Miss., to eastern and New England points, of preference of shippers from North Carolina points, and demand for reparation.

Complainant began manufacturing furniture in 1905, serving the southern and western markets only. Furniture manufacturers in North Carolina made a special kind of furniture for the New England trade, requiring a special pattern. Complainant, in 1906, finding that it would be more economical to sell to the New England trade, entered into negotiations with the defendant and its connecting lines to secure a rate to New England points which would enable it to compete with the North Carolina factories. At this time, the rate to New England was \$1.09 per 100 pounds, and at the close of negotiations, the defendants reduced the rates to 55-58c., this giving a differential to the North Carolina factories of about 9c., which was the same as that enjoyed by complainant to western points. These reduced rates remained in effect for about a year when they were increased to from 63c. to 71c., thus wiping out all complainant's profit. On the faith of the continuance of the reduced rates, complainant had altered its patterns and gone to other considerable expense. Competition did not appear to affect the rate relation in question, practically the only consideration being distance. The reason for the final increase of the rate appeared to be a difference among the carriers as to their divisions of the rate.

Held, (Clark, C.), (a) that the reasonableness of the through rate must not be determined by the divisions among the carriers, but must be justified as a whole;

(b) that in view of the voluntary establishment of the reduced rate and of complainant's alteration of its plans in reliance thereon, the increase was unreasonable and that reduction should be made to from 58 to 63c.

Order accordingly, but order with reference to division among defendants postponed for their voluntary action. No order for reparation, in the absence of satisfactory evidence.

649.—Randolph Lumber Co. v. Seaboard A. L. Ry. Co., et al.
13 I. C. C. Rep. 601. (June 2, 1908.)

Complaint of unreasonable rate on lumber from Chester, Va., to Ohio Territory, and violation of Sec. 4 by less charge from Petersburg, Va., a more distant point on the same line.

The Petersburg rate was 16c. per 100 pounds, while that from Chester was 18 3-10c., this rate being formed by adding the local rate from Chester to Richmond, Va. At Petersburg and Richmond, there was railroad competition which was not present at Chester.

Held, (Prouty, C.), (a) that in cases like the present, the real question generally should be, not whether competition has produced at the more distant point a lower rate, but whether, under all circumstances, a rate from the competitive point fairly ought, in view of the competition, to be lower than that from the intermediate one;

(b) that the competition here justified a higher rate from Chester, but that the difference should not equal the full amount of the local rate from Chester to Richmond;

(c) that a joint route and rate should be applied from Chester, the latter not to exceed 17½c.

Order accordingly, without opinion as to division of through rate.

Re-hearing denied. 14 I. C. C. Rep. 338. June 27, 1908.

650.—Anthony Grocery Co. v. Atchison, T. & S. F. R. Co., et al.
13 I. C. C. Rep. 605. (June 2, 1908.)

Complaint of preference of Wichita and other Kansas points over Anthony, Kansas, in rates on rice and sugar from points in Texas and Louisiana.

The differential complained of was 6c. per 100 pounds. The carriers endeavored to justify it on the ground, first, that Anthony was on a branch line; second, that the rates to the preferred points were governed by Mississippi and Missouri River rates; third, that the hauls to Anthony were over two lines, while most of those to the other points were over but one.

Held, (Clements, C.), (a) that some differential against Anthony was proper, but that this should not exceed 3c.;

(b) that no order could be entered, the complaint not being sufficiently specific to enable the Commission to determine the proper carriers to which an order should be directed.

Complaint dismissed without prejudice.

651.—La Salle & B. C. R. Co. v. Chicago & N. W. R. Co. 13 I. C. C. Rep. 610. (June 2, 1908.)

Demand by a carrier of its agreed division of through rates from a connecting line.

Complainant owned a small road and defendant had agreed with it that, as regards certain traffic, it should receive 15c. per ton as its allowance. Defendant subsequently refused to pay this amount. No provision was made in the published tariffs for any allowance to

complainant. At the hearing, complainant asked leave to amend its petition so as to contain a request for the establishment of through routes and joint rates covering the traffic in question.

Held, (Clements, C.), (a) that the Commission had no power to award reparation for breach of contract between connecting lines, such claims resting entirely upon contract and the jurisdiction of the Commission being limited to reparation for damages caused by some violation of the Act to Regulate Commerce;

(b) that the Commission did not favor the practice of engrafting an application for a through route and joint rates onto a claim like the present.

Application to amend petition denied and complaint dismissed.

652.—England & Co. v. Baltimore & O. R. Co. 13 I. C. C. Rep. 614. (June 2, 1908.)

Demand for reparation for insurance and storage charges on grain, alleged to be illegally collected by defendant.

Defendant's tariff provided that grain tendered "for immediate shipment" should be stored and insured by defendant without charge, but that insurance should be charged on grain not to be immediately shipped. "Immediate shipment" was understood unless otherwise ordered. Complainant tendered certain grain for shipment, but the complainant and the defendant had different understandings as to whether the grain was for immediate shipment or not. The tariff in question did not specify the amount of the storage charges or furnished any specific basis for estimating them.

Held, (Harlan, C.), (a) that the grain in question must be taken to have been furnished for immediate shipment, and reparation of the amounts paid would be ordered;

(b) that the tariff was defective in not specifying the amount of the storage charges.

Order accordingly.

653.—Topeka Banana Dealers' Ass'n. v. St. Louis & San Fran. R. Co., et al. 13 I. C. C. Rep. 620. (June 2, 1908.)

Complaint of unreasonable method of assessing freight charges on bananas from New Orleans and Mobile to Kansas City, and preference of Chicago therein, of violation of Sec. 4, and demand for reparation.

The bananas were weighed by representatives of the shipper and carrier at the point of shipment, and no allowance was made for shrinkage, although this was admittedly in excess of 2%. A higher rate was charged to Kansas City than to Burlington, Iowa, a more distant point, but no bananas moved to Burlington via Kansas City, this being merely a paper rate, and the Burlington bananas moving through St. Louis. The minimum carload west of the Mississippi River was fixed at 20,000 pounds, while that to Chicago and points east of the river was fixed at 18,000 pounds. The latter, however,

was made to meet competition on lighter bananas coming by way of Baltimore. The banana traffic was taken by the defendants at very high speed and on an exact schedule, in order to do away with the necessity of icing. The rates complained of were to Kansas City 63c., to Iola and Parsons 73c., and to Topeka and Hutchinson 80c., for distances of from 819 to 991 miles. Somewhat less rates were in force to Baltimore and Chicago, but at these points the volume of traffic was greater and the conditions in other ways dissimilar.

Held, (Lane, C.), (a) that the fixing of weights at the point of shipment without allowance for shrinkage was proper, the fact of shrinkage being taken into consideration in determining the rate;

(b) that the minimum carload requirement did not work an undue preference of Chicago, being the result of competition;

(c) that the rate to Burlington being a mere paper rate, no violation of Sec. 4 was shown;

(d) that by reason of the special facilities allowed this traffic, the rates in question did not appear to be unreasonable *per se*.

Complaint dismissed.

654.—*Rhineland Paper Co. v. Northern Pac. R. Co., et al.* 13 I. C. C. Rep. 633. (June 8, 1908.)

Complaint of unreasonable rate on wood pulp from Duluth, Minn., to Rhineland, Wis., and from Rhineland to points east of the Mississippi River, and preference thereby of shippers from Fox River district points.

The rate from Duluth to Rhineland was originally 8c., but, during the hearing, was reduced to 6.95c. The rate to points east was 2c. in excess of the rate from the Fox River district points, but these points were from 100 to 150 miles nearer, and paid a rate in the other direction about one cent higher. Complainants relied on an agreement on the part of defendants that they should receive the same rates as the Fox River district points. The rates from the general region in question were divided into three groups, taking a 10, 12 and a 13c. rate respectively.

Held, (Knapp, Ch.), (a) that although the agreement might perhaps be persuasive as showing what the carrier considered a reasonable rate, it was unenforceable as a contract, being in violation of the terms of the Act;

(b) that the application of group rates necessarily involved a certain amount of discrimination, but that in the present case, this was not undue.

Complaint dismissed.

655.—*Payne-Gardner Co. v. Louisville & N. R. Co.* 13 I. C. C. Rep. 638. (June 8, 1908.)

Complaint of unreasonable rate on sugar from New Orleans, La., to Gallatin, Tenn., of preference of shippers at Nashville, Tenn., and Bowling Green, and Louisville, Ky., and demand for reparation.

The rate in question was 31c. per 100 pounds for a distance of 652 miles, while the rate to Nashville was but 15c. for 626 miles, to Bowling Green, 20c. for 697 miles, and to Louisville, 17c. for 811 miles. The short line distances, however, to Nashville and to Louisville were 593 and 780 miles. At Louisville and Nashville it appeared that there was much stronger competition than at Gallatin, but at Bowling Green, the competition did not appear to be so strong. The Gallatin rate was a combination rate on Nashville. The competition at Nashville did not, however, seem to account for the very low rate there.

Held, (Knapp, Ch.), that although advantages of location due to competition should be given effect, yet in the present case the great disparity of rates appeared to be, to a certain extent, arbitrary, and the rate to Gallatin should not reasonably exceed 25c. per 100 pounds.

Order accordingly, including provision for reparation.

656.—**Phillips Co., et al. v. Southern Pacific Co., et al.** 13 I. C. C. Rep. 644. (June 8, 1908.)

Complaint of unreasonable rates on canned goods and dried fruit from Pacific Coast points to Nashville, as compared with those to other competing points, of preference of the latter, and of violation of Sec. 4.

The rates in question were, on canned goods, 89c. per 100 pounds; on dried fruit, \$1.16; and on dried fruit in sacks, \$1.36. Lower rates were allowed other points, some of them more distant, but these rates appeared to result from competition.

Held, (Clark, C.), that the preferences shown were not undue nor the rates unreasonable *per se*, nor did any violation of Sec. 4 appear.

Complaint dismissed.

657.—**Fort Smith Traffic Bureau v. St. Louis & San Fran. R. Co., et al.** 13 I. C. C. Rep. 651. (June 2, 1908.)

Complaint of unreasonable rate on nitrate of soda, to be used in the manufacture of powder, as compared to that to be used in the manufacture of fertilizer, and demand for reparation.

The complaint was brought on behalf of the Equitable Powder Mfg. Co., and the point relied on was that the defendant's tariffs provided for a rate of 20c. on nitrate of soda to be used in the manufacture of fertilizer, whereas the rate on the same article to be used in making powder was 27c.

Held, (Cockrell, C.), (a) that carriers had no right to dictate the use to which commodities transported by them should be put, nor to base a difference in rates on this ground;

(b) that the only proper tariff rate on nitrate of soda here was 27c. per 100 pounds, and this rate was not shown to be unreasonable.

Order accordingly, without provision for reparation.

658.—Thompson Lumber Co., et al. v. Ill. Cent. R. Co., et al. 13 I. C. C. Rep. 657. (June 1, 1908.)

Complaint of unreasonable rate on hard wood lumber from Memphis, Tenn., to New Orleans, La., and demand for reparation.

The rate in question was 12c. per 100 pounds, and had been increased on Feb. 2, 1903, from 10c., the 10c. rate having previously been in force for 15 years. Prior to 1887, the published rate, although higher than 12c., had not been adhered to even when published. The lumber in question produced a high revenue per car and the increase seemed to have resulted, not really from increased cost of operation, but from the fact that defendants believed that the traffic could bear this rate. Defendants also relied on the fact that the cars were delayed at New Orleans, but the evidence on this point was unsatisfactory.

Held, (Lane, C.), (a) that the 12c. rate was unreasonable to the amount of 2c.;

(b) that reparation would not, however, be awarded prior to the day of the filing of the complaint;

(c) (semble) that even though the increase had resulted from the fact that defendants had more traffic on hand than they could carry, it would not on this account have been justified.

Order accordingly.

659.—Burgess, et al. v. Transcontinental Fr. Bur., et al. 13 I. C. C. Rep. 668. (June 2, 1908.)

Complaint of unreasonable rate on hard wood lumber from Mississippi River points to the Pacific Coast, and demand for reparation.

The rate in question was 85c. per 100 pounds. For several years previous to 1904, it had been 75c. The rate on soft wood from Pacific Coast to Chicago was 60c. and complainants relied, to a great extent, on a comparison with this rate, and on the fact that there was greater market competition in the case of the east-bound soft lumber than in the hard wood lumber at the Pacific Coast.

Held, (Prouty, C.), (a) that the circumstances justified a somewhat higher rate on the west-bound lumber, but that this rate should not exceed 75c.;

(b) that the measure of damages in such a case was merely the difference between the rate charged and that held to be reasonable, without reference to the fact that the shipper might have charged a higher price for his goods by reason of having paid a higher freight rate;

(c) that in the present case claims for reparation were not promptly presented and actively prosecuted, and for this reason no reparation would be allowed on shipments prior to the date of the filing of the complaint.

Order accordingly.

660.—International Coal Mining Co. v. Pennsylvania R. Co. 162 Fed. 996; C. C. E. D. Pa. (July 17, 1908.)

Motion for new trial in suit for damages for alleged unlawful discrimination.

The jury rendered a verdict in favor of the complainant. Both parties filed motions and reasons for new trial. The only point discussed by the Court was the point urged by the complainant, to the effect that the Court erred in charging the jury that the complainant could not recover for discriminations against the plaintiff in any year in which the plaintiff had received its rebates. It appeared that during the period in question, plaintiff had solicited rebates continuously, but, for some reason, had not been given as large ones as competitors.

Held, (Holland, D. J.), that the Courts would not lend their assistance to make even division of what might be called "commercial graft," and the instruction was proper.

New trial refused.

661.—Oregon & W. Lumber Mfgs., et al. v. Union Pac. R. Co., et al. 14 I. C. C. Rep. 1. (June 2, 1908.)

Complaint of unreasonable rates on lumber from the northwestern lumber districts, and demand for reparation.

The complaint grew out of a general increase on these lumber rates in effect Nov. 1, 1907. This increase in rate was not uniform to all points, but, as a general rule, averaged about 20% over the rate theretofore in force. The latter rates had been in effect over most of the lines since 1893, and over some for a longer period. The defendants alleged, as a justification for the increase: (1) that the price of lumber had of recent years advanced 40 to 50%; (2) that the empty car movement at the time of the establishment of the original rates had been eastward, but that now it was westward; (3) that the cost of operating expenses had largely increased in recent years. The testimony would seem to have borne out all these contentions by the defendant. It appeared, however, that during the past few years the defendants had been prosperous, and an increase in rate did not seem necessary to bring their total revenue up to a reasonable figure. The lumber industry had been established in reliance on the old rates and the increase would undoubtedly be a severe matter to many dealers. A great mass of evidence was offered involving a comparison with rates on other commodities.

Held, (Clark, C.), (a) that the advance in question was unreasonable, and certain of the rates should be reduced to the same figures as before the advance, others to lower figures, and that still others might be increased over the prior rates, but not to the amount of the advance of Nov. 1, 1907;

(b) that reparation should be awarded on shipments subsequent

to Nov. 1st, but in no case would this be based on rates lower than those prescribed or than those in effect prior to Nov. 1st.

Order accordingly.

Knapp, Ch., and Harlan, C., dissented, on the ground that the rates previously in force had been exceptionally low, that the increase in the price of lumber warranted an advance, and that the mere fact that defendant's earnings were large did not prevent its increasing to a reasonable figure rates previously very low.

662.—*United States v. Atchison, T. & S. F. Ry. Co.* 163 Fed. 111; D. C. S. D. Cal. S. D. (Oct. 11, 1908.)

Motion to strike out evidence in prosecution against a carrier for allowing concessions from published rates.

The evidence offered by the carrier was to the effect that the apparent concessions in rates in question were produced by allowances on the published tariffs, by reason of compromises of claims which shippers had against the defendants.

Held, (Wellborn, C. J.), (a) that a rate, in order to be uniform in operation, must be expressed in dollars and cents, and that to allow the carrier to accept part of its compensation in a commodity, or by way of compromising a claim, would open the door to illegal discriminations;

(b) that the evidence should be excluded.

Motion allowed.

663.—*United States v. Chicago, I. & L. Ry. Co.* 163 Fed. 114; C. C. N. D. Ill. E. D. (July 15, 1908.)

Petition by the Government to prevent defendant from giving transportation in exchange for advertising.

The defendant had entered into a contract with Munsey's Magazine whereby it had agreed to allow that company trip tickets or mileage to a certain value to be used by the publisher, his employes, and their families. Under the contract, the transportation might have been demanded before the advertisement was published.

Held, (Kohlsaat, C. J.), (a) that the trend of the law was for the most rigid enforcement of the rule requiring exact equalities in rates;

(b) that although rates might be paid by means of checks, drafts, and bills of exchange, or other instruments passing as cash, yet the proposed action of the defendant was contrary to the letter and spirit of the Act, and was illegal, especially since that the facts presented not the settlement of a liquidated liability, but an agreement to settle a future one by means of transportation.

Injunction granted as prayed for.

664.—*Pacific Coast Lum. Mfgs. Ass'n., et al. v. Northern Pac. Ry. Co., et al.* 14 I. C. C. Rep. 23. (June 2, 1908.)

Complaint of unreasonable carload rates on lumber from northwest points to points of destination in the east, south and southeast.

The rates complained of were the result of an advance on Nov. 1, 1907. The facts are very similar to those in the previous and subsequent cases, the advances complained of averaging about 15%. The rates previously in force had been long maintained. In the months immediately preceding the complaint, the lumber industry had been greatly depressed, but this was due, in a large part, to the financial condition of the country. It appeared that these western rates yielded greater revenue per ton per mile than the rates on southern lumber, and that the lumber trade had adjusted itself to the conditions existing under the old rates. From all the facts it appeared that the rates previously in effect were, for the most part, fairly remunerative.

Held, (Clements, C.), (a) that the voluntary maintenance of a given rate by a carrier for a long period threw the burden on the carrier to justify the advance;

(b) that the increase in rates presented was unreasonable, and that, in certain cases, the former rates should be restored, while in other cases a small increase should be permitted, and in still other cases, the rates should be reduced below those in effect prior to the advance;

(c) that reparation should be awarded, based on the same principle as in 661, *supra*.

Order accordingly, Knapp, Ch., and Harlan, C., dissenting.

665.—Potlatch Lumber Co., et al. v. Northern Pac. R. Co., et al.
14 I. C. C. Rep. 41. (June 2, 1908.)

Complaint of unreasonable rates on lumber from Washington and Oregon to eastern and southeastern points.

This case also turned on the reasonableness of the advance of Nov. 1, 1907, involved in the two prior Commission decisions. There was, also, involved, however, the question as to whether the points in the Spokane District were entitled to a differential as against the Pacific Coast points. This differential was allowed by the carriers under the old tariffs. It appeared that the lumbermen in the Spokane District had prospered under the old rates, although their product was inferior.

Held, (Cockrell, C.), (a) that the allowance of a differential to the Spokane District was in the nature of an admission that such was just;

(b) that the rates in question, as advanced, were unreasonable and should be reduced as indicated in the opinion;

(c) that points in the Spokane District were entitled to a differential by graded rates specified.

Order accordingly.

Knapp, Ch., and Harlan, C., dissenting.

666.—Pacific Coast Lum. Mfgs. Ass'n. v. Northern Pac. R. Co., et al.
14 I. C. C. Rep. 51. (June 1, 1908.)

Complaint of refusal to allow through route and joint rate on lumber and shingles from Washington points through Portland, Ore., over the lines of the Union Pacific system, to eastern destinations.

It appeared that the Great Northern Ry. Co., and the Northern Pacific Ry. both extended into the lumber region in question, and that through routes and rates over these two lines were then in force, these routes being less distant than that proposed. Prior to within two years before the filing of the complaint, the facilities over the existing routes were ample, but beginning at this time and extending up to the time of complaint, the traffic became so congested that the moving of lumber over these routes at the time of the hearing had almost ceased. The Great Northern and Union Pacific roads, however, predicted that within a short time this condition would be relieved by reason both of the falling off of the coast traffic and of increased facilities. This prediction had been realized at the time of the decision, due, however, for the most part to the falling off of traffic. To points in Colorado and Utah, the distance by the proposed route was less, but the testimony showed that the service by the existing routes, even under favorable conditions, was unsatisfactory. The Commission was evidently impressed with the idea that the Union Pacific and Great Northern roads had been built to handle this traffic and regarded them as having a sort of vested right to do so.

Held, (Prouty, C.), (a) that in order to give the Commission jurisdiction to order a through route, it was not necessary that the failure by the defendants to form a through route created a discrimination or imposed an unreasonable rate or violated some other provision of the Act existing prior to 1906, since the refusal by the carriers to establish a reasonable through route was, of itself, a violation of the Act;

(b) that as to points east of Colorado common points, the existing route was satisfactory, and the Commission had no jurisdiction to establish that prayed for;

(c) that as regards Colorado and Utah points, there was no satisfactory through route and that prayed for should be established;

(d) that distance was an important element in determining whether or not a given route was satisfactory, a circuitous route being less satisfactory than a direct one, but that this factor did not control the present case with regard to the route to eastern points;

(e) (semble) that there was an important difference between a reasonable through route for freight and one for passengers, since the personal element entered into the latter and not into the former.

Order accordingly, fixing maximum through rates to Colorado and Utah points.

Complaint of unreasonable rate on rough green fir lumber and lathe from points in Willamette Valley to San Francisco.

Prior to 1898, no lumber had been cut in the Willamette Valley except for local consumption, but in that year the Southern Pac. Co. decided upon a policy which would develop the lumber industry there. In order to do so, it was necessary to establish a rate to San Francisco equivalent to the water rate from Portland and corresponding points. The rate of \$3.10 per ton was, therefore, put in effect and the company made it generally known that this was in pursuance of a permanent policy. Thereupon, the lumber industry developed very rapidly, and many mills were built and much capital invested on the faith of the new rate. In January, 1904, however, the \$3.10 rate was withdrawn and a rate of \$5.00 established, but on complaint of shippers, the \$3.10 rate was restored as regards rough green lumber. In April, 1907, this rate was again changed from \$3.10 to \$5.00. From mills on the west bank of the river, an additional charge of 25c. per ton was imposed. Mills at Portland were not given the benefit of the \$3.10 rate. To restore the \$5.00 rate would wipe out all possible profit from the sale of the lumber to the principal markets and would so seriously affect the industry as practically to destroy it, except in the case of the large shippers. Tested by comparison of rates in other parts of the country, the \$3.10 rate did not appear extravagantly low.

Held, (Prouty, C.), (a) that although, as a general rule, a carrier was not conclusively estopped from advancing rates on the faith of which industries had grown up, yet in a case like the present, the tremendous interests involved in the stability of the rates in question would lead the Commission to compel their substantial maintenance;

(b) that the rate from the west bank was properly 25c. higher;

(c) that there was no reason for allowing the Portland mills the benefit of the lower rate;

(d) that a rate of \$3.40 would be prescribed from points on the east bank and of \$3.65 from those on the west bank, and questions of reparation would be preserved for future proceedings.

Order accordingly.

Harlan, C., and Knapp, Ch., dissented, on the ground that the majority ordered the reduction, not because the increased rate was excessive, but because of certain supposed equities existing between the complaining shippers and the defending carriers. They did not consider that the Act warranted the condemnation of a rate under such considerations.

668.—*Rice v. Georgia R. Co., et al.* 14 I. C. C. Rep. 75. (June 8, 1908.)

Complaint of unreasonable rates on coal from Jellico, Tenn., to Augusta, Ga., of preference of Charleston, S. C., over Augusta, Ga., in coal rates, of violation of Sec. 4 by a higher charge to Augusta,

and of unreasonable re-weighing regulation, and demand for reparation.

It appeared that the competitive conditions at Charleston were much different from those at Augusta, and the rate to Augusta did not appear to be unreasonable *per se*. Defendant's tariffs provided that in case a shipper desired to have a shipment re-weighed he should deposit \$2.00. If it appeared that the weight was wrong by 2% and by more than 1000 pounds, the rate would be corrected and the \$2.00 refunded.

Held, (Clark, C.), (a) that rates to Augusta were not unreasonable nor was undue preference of Charleston shown;

(b) that the \$2.00 charge for re-weighing was not unreasonable;

(c) that the re-weighing regulation was unreasonable and should be altered so as to allow a correction where a difference of 1% or 500 pounds per ton on re-weighing.

Order accordingly.

669.—Pueblo Transportation Ass'n. v. Southern Pac. Co., et al.
14 I. C. C. Rep. 82. (June 8, 1908.)

Demand for reparation for over-charge on sugar shipments.

Plaintiff's cause for action was based on the fact that a supplement to defendant's tariff increasing the carload minimum from 24,000 to 30,000 pounds, had not been posted the full thirty days before it was to go in force. It had been duly filed and the failure to post it was due to unforeseen causes. It was posted more than three weeks before any shipment moved on it. The carriers were willing, in this case, to refund the excess charges claimed.

Held, (Clark, C.), (a) that posting a rate which had been duly filed was not essential to making it lawful;

(b) that in the present case, the relief asked for would be denied, since the rate charged was lawful, and it did not appear in any way unreasonable.

Complaint dismissed.

670.—Rail and River Coal Co. v. Baltimore & O. R. Co. 14 I. C. C. Rep. 86. (June 2, 1908.)

Complaint of discrimination in distribution of cars for coal.

The method of distribution employed in the region where complainant's mines were situated was based partly on the physical capacity of the mine and partly on its commercial capacity. This system had been in force 6 years and little fault was found with it by the great majority of shippers. Defendants contended that rules regulating car distribution were not rules affecting rates, and that the Commission had no power to modify them. Private and foreign fuel cars were not charged against the shares of the mines receiving them. Arbitrary allowances were made in favor of new mines, and operators controlling more than one mine were permitted to pool the percentages of all their mines.

Held, (Harlan, C.), (a) that any practice or regulation unlawfully discriminating against one shipper or affording another an undue preference was a regulation or practice affecting rates within the meaning of the Act, these words embracing all regulations and practices in which carriers offered their services to the shipping public or conducted their transportation;

(b) that the mere ownership of private cars gave the owner no superior right to the use of the locomotives, etc., and this principle was often lost sight of in these cases.

(c) that private and foreign fuel cars should be counted against the percentages of the mines receiving them;

(d) that under the facts here presented, the Commission would not condemn the method of car distribution;

(e) nor would it condemn the practice allowing arbitraries to new mines of pooling percentages.

Order accordingly.

An injunction to restrain the enforcement of the order issued in this case was denied by the Court.

671.—Gump v. Baltimore & O. R. Co., et al. 14 I. C. C. Rep. 98. (June 8, 1908.)

Complaint of preference of Bristol and Morristown, Tenn., over Johnson City, Tenn., in class and commodity rates from either direction, and of violation of Sec. 4.

Johnson City was situated between Morristown and Bristol, and rates to Johnson City exceeded those to the other two points. Competition existed at Bristol which did not exist at Johnson City, but the competitive conditions at Morristown did not appear to be different from those prevailing at Johnson City. The rates to Johnson City did not appear to be unreasonable *per se*.

Held, (Clark, C.), that the conditions warranted a less charge to Bristol through Johnson City than to Johnson City, but that no higher rate should be charged to Morristown through Johnson City than that to Johnson City.

Order accordingly, no reparation order being made, however, for the present.

672.—Oshkosh Logging Tool Co., et al. v. Chicago & N. W. R. Co., et al. 14 I. C. C. Rep. 109, 114. (June 22, 1908.)

Complaint of unreasonable joint rates on shipments from Central Freight Ass'n. Territory to points in Fox River Valley, Wis., and demand for reparation.

The ground on which the complaint was based was that the through rates exceeded the combined locals. No transportation reason was assigned by the defendants for this discrepancy. The dates of the various shipments, etc., on which reparation was claimed were not set out, but complainant specified the number and date of the way bills, the point from which the commodity was billed, the point of

origin, the name of the consignee, the rate charged, and the amount of the alleged over-charge.

Held, (Knapp, Ch.), (a) that the statement was sufficient to put defendants on notice of the claims which they were required to meet;

(b) that no justification being alleged for the excess charge over the combined locals, the through rates were unreasonable.

No order issued; case held for particulars of shipments.

673.—Victor Fuel Co. v. Atchison, T. & S. F. R. Co. 14 I. C. C. Rep. 119. (June 23, 1908.)

Demand for reparation on account of allowances for car-door boards for coal cars.

In shipping the coal in the Rocky Mountain region it was necessary to place false doors on the coal cars to prevent loss of coal in transit. Prior to October 29, 1907, defendant's tariffs provided that 25c. per door would be allowed to shippers. Later in the summer, this was increased to 50c., but the tariff announcing the increase did not become effective until October 29, 1907. Defendants had agreed that the new regulation should apply to complainant on and after July 1st, and was willing to allow damages on this basis.

Held, (Knapp, Ch.), that it would have been illegal to pay complainant the allowance in question until the tariff became effective, and that the Commission would not now permit the tariff to be departed from.

Complaint dismissed.

674.—Ottumwa Bridge Co. v. Chicago, M. & St. P. Ry. Co. 14 I. C. C. Rep. 121. (June 24, 1908.)

Complaint of unreasonable rate on structural iron from Ottumwa, Ia., to Kansas City, Mo., and demand for reparation.

The sole basis of the complaint was that shortly after the shipment in question, defendant had reduced its rate from 22c. to 16c.

Held, (Clark, C.), that although the 16c. rate appeared to be reasonable at the present time, the Commission was unwilling to subscribe to the theory that the voluntary reduction of a rate by a carrier conclusively shows its prior unreasonableness, making reparation necessary on all shipments within the Statute of Limitations.

Complaint dismissed.

675.—George's Creek Basin Coal Co., et al. v. Baltimore & O. R. Co., et al. 14 I. C. C. Rep. 127. (June 23, 1908.)

Complaint of unreasonable rate on small vein coal from points in Allegheny Co., when water borne to competitive points.

In the George's Creek basin, there were two kinds of coal, big vein and small vein. The big vein coal was so superior as to be in a class by itself, under equal rates. To competitive points, in order to equalize this advantage, the carriers had placed a differential of

10c. against this big vein coal in favor of Pennsylvania and West Virginia coal. This differential went into effect before the small vein coal began to be mined. The latter, not being up to the standard of the big vein coal, could not compete with it or with the Pennsylvania coal under the differential which was applied to it as well as to the big vein coal.

Held, (Harlan, C.), that the differential as against small vein coal was unreasonable and should be removed.

(It was intimated that if necessary the differential would be removed also on the large vein coal).

Order accordingly.

Prouty and Lane, C. C., dissented, on the ground that the order amounted merely to equalizing natural advantages.

676.—*Tayntor Granite Co. v. Montpelier & W. R. R., et al.* 14 I. C. C. Rep. 136. (June 24, 1908.)

Complaint of unreasonable minimum carload rule in shipments of granite from Barre, Vermont, to Leicestershire, N. Y., and demand for reparation.

For a long period prior to August 1, 1907, the minimum applicable to the commodities in question was 30,000 lbs. On August 1, 1907, this was increased to 40,000 pounds. It appeared that 40,000 pounds could not reasonably be loaded on the cars furnished. At the hearing, defendants reduced the minimum to 36,000 pounds on 36 ft. cars, and 30,000 pounds on smaller ones.

Held, (Prouty, C.), that the regulation as amended at the hearing was reasonable and reparation should be awarded on this basis.

Order accordingly.

In the 8 cases following the above, pages 139 to 146, reparation was granted to various shippers of granite on the basis of the foregoing decision.

677.—*Montgomery Fr. Bur. v. Western Ry. of Alabama, et al.* 14 I. C. C. Rep. 150, 374. (June 24, 1908.)

Complaint of unreasonable rates on fertilizer from Montgomery, to Mississippi points on the Alabama & Vicksburg Ry. and the New Orleans & N. E. R.

The rates in question were \$2.40 per ton. The rate from Montgomery to Meridian was \$1.40 per ton, and to this was added an arbitrary of \$1.00 to destination. The local rate to Meridian, established by the Mississippi Railroad Commission, was less than \$1.00, and this circumstance formed the basis of the complaint. The \$2.40 rate was intended to put the points of production on a parity.

Held, (Prouty, C.), (a) that through rates should scarcely ever exceed the sum of the locals, for where such was the case, shippers might obtain advantage in rates by rebilling at junction points;

(b) that the rate in question was unreasonable in so far as it exceeded the combined locals.

Order accordingly.

678.—**National Wholesale Lumber Dealers' Ass'n., et al. v. Atlantic Coast Line R. Co., et al.** 14 I. C. C. Rep. 154. (June 23, 1908.)

Complaint of unreasonable regulation requiring lumber shippers on open cars to stake and secure the loads for safe carriage.

For many years prior to this complaint, and prior even to the passage of the Act, it had been the custom for lumber shippers to prepare open cars for safe carriage of the lumber. Different equipment was necessary in case of different kinds of lumber, and the cost of preparing the cars varied to a great extent in different localities, so that it was impossible accurately to determine the reasonable cost to the shipper. Rates had always been made with reference to this requirement. It appeared that experiments had been made with steel stakes designed to hold the lumber in place, but these had not been wholly successful. It also appeared that shippers of grain had been allowed a concession for furnishing car-doors in box cars.

Held, (Knapp, Ch.), (a) that in administering the Statute, the Commission would not interfere with established usages unless they plainly offended its provisions, and in a substantial manner abridged the rights which it was designed to protect;

(b) that grain and lumber were not competitive articles, and that the allowance for car-doors for grain would not necessitate a similar allowance for lumber;

(c) that the regulation in question was not unreasonable.

Complaint dismissed.

Clark and Harlan, C. C., dissented.

679.—**Traer, Receiver v. Chicago, B. & Q. R. Co.** 14 I. C. C. Rep. 165. (June 24, 1908.)

Complaint of failure by defendant to rate coal mines for car distribution.

Defendants had established no fixed ratings or system of car distribution in times of car famine, but it appeared that such periods were very scarce, and that when they occurred, cars had been distributed by a system based partly on physical capacity and partly on output. There did not appear to be any unjust discrimination among the different lines at such times, and there was no complaint that such discrimination had ever occurred.

Held, (Prouty, C.), (a) that the Act to Regulate Commerce left carriers free to initiate their own rates, rules and regulations, and the Commission could only interfere when that became clearly necessary to prevent some wrong forbidden by the Act;

(b) that the Act did not require a railroad to establish a system of mine ratings and car distribution unless this was necessary to prevent discrimination among its patrons, and the Commission would not order the establishment of such a system unless it fairly appeared

that, without it, discrimination would result which might be prevented by the order.

Complaint dismissed.

680.—Wilson Produce Co., et al. v. Pennsylvania R. Co. 14 I. C. C. Rep. 170. (June 24, 1908.)

Complaint of unreasonable track storage charges on carload shipments of fruit and produce at Pittsburg.

Defendant's Pittsburg yards were much congested by reason of the fact that almost all consignees of fruit and produce sold these articles on the tracks, using the cars as their own warehouse. To meet this condition, defendants established a rule allowing 48 hours free time. For the second 48 hours, a charge of \$1.00 per day was made; for the third 48 hours, \$3.00 per day; and for each succeeding day or fraction thereof \$4.00 per day, until the car was released. An act of the State of Pennsylvania made it unlawful to charge more than \$1.00 per day including storage charges after the elapse of the free time allowed. It appeared that other lines reaching Pittsburg did not make these charges and that they were not made at certain other points.

Held, (Lane, C.), (a) that the provision of the State Statute was not controlling on the Commission in respect to interstate traffic;

(b) that no violation of Sec. 2 or 3 was presented, since no preference or discrimination between competitive articles or localities appeared;

(c) that in view of the conditions at Pittsburg, the track or storage charges in question were not unreasonable.

Complaint dismissed.

681.—New York Hay Exchange Ass'n. v. Pennsylvania R. Co., et al. 14 I. C. C. Rep. 178. (June 27, 1908.)

Complaint of unreasonable track storage charges for hay in Greater New York.

Defendant's yard space in New York was limited and more could not reasonably be obtained. It had in force a rule applicable to all commodities except coal and coke, whereby a charge in addition to the regular demurrage charges was exacted for detention of cars after the 2 days free time allowed. This charge was: For the third day \$1.00; for the fourth day, \$2.00; for the fifth day, \$3.00; for the sixth day, \$4.00; and for the seventh and each succeeding day, \$5.00. It appeared that under the system of doing business, hay could not reasonably be unloaded within the 48 hours allotted, and that this method could not be changed so as to promote quicker unloading without the incurring of prohibitive charges by the dealers.

Held, (Prouty, C.), (a) that the charge in question was twofold in its nature, being in part a compensation for an additional service outside of transportation proper and in part a penalty to promote prompt unloading;

(b) that a reasonable charge for the additional service rendered should properly exceed \$1.00 per day;

(c) that no competitive condition was presented which would give rise to any charge of discrimination or preference;

(d) that the charges exacted in this case were unreasonable, but that defendant was justified in charging, in addition to demurrage charges, \$1.00 per day for the third and fourth days after the car was placed for unloading, and \$2.00 per day for subsequent days.

Order accordingly.

682.—Patten v. Wisconsin Cent. Ry. Co., et al. 14 I. C. C. Rep. 189. (June 27, 1908.)

Complaint of unreasonable rate on lumber from Boyd, Wis., to Palermo, N. D., and demand for reparation.

The basis of the complaint in this case was that, there being no joint rate in force between the points in question, the combined local charges were collected, aggregating 48½c. This rate, however, had been reduced by 3c. after the hearing. Practically the only evidence offered by complainant was of a less rate on emigrants' movables.

Held, (Harlan, C.), (a) that a railroad might be justified in transporting emigrants' movables at less than normal rates as a means of increasing its general traffic by building up the country;

(b) that the rate in question appeared to be unreasonable.

Complaint dismissed.

683-A.—Rahway Valley R. Co. v. Delaware, L. & W. R. Co. 14 I. C. C. Rep. 191. (June 24, 1908.)

Application for switch connection at Summit, N. J.

Complainant was a short branch line with its northern terminus at Summit, N. J., on the line of the Delaware, L. & W. R. Co., its southern terminus at Rosselle, N. J., on the Lehigh Valley Railroad, and its southwestern terminus at Aldene, on the Central R. of New Jersey. Along its line there were a number of industries producing about 250 carloads annually. It had built up to the line of defendant's right of way. The connection asked for seemed reasonably practicable and might be made with safety to the Lackawanna's traffic. It appeared that the connection would furnish at least 50 carloads a year to the Lackawanna. Defendant resisted the application on the ground that its policy was to restrict the line in question to passenger service as much as possible.

Held, (Lane, C.), (a) that the Act did not confer on the Commission plenary discretion as to the advisability of switch connections, but required the connection only under certain specified circumstances, and only on three conditions: That the switch connection be reasonable practicable; that it could be put in with safety; and that it would furnish sufficient business to justify its construction and maintenance;

(b) that in the present case these conditions were satisfied and an order would be issued requiring the installing of the switch, the expense to be borne by complainant;

(c) (semble) that it did not follow that all branch railroad lines having switch connections with the main line of the railroad were entitled to joint rates.

Order accordingly.

683-B.—Delaware, L. & W. R. Co. v. Interstate Commerce Commission. 000 Fed. —. (October, 1908.)

Bill for injunction to restrain enforcement of the order of the Commission issued in the above.

Held, (Lacombe, Ward and Noyes, J. J.), that although Sec. 1 provides for written application for switches by lateral branch lines as well as by shippers, the provision for hearing, etc., before the Commission specifies only shippers as proper parties complainant, and the Commission, therefore, had no power to order a switch connection where a lateral branch line was the only moving party.

Preliminary injunction issued.

684.—Southern Pine Lumber Co. v. Southern Ry. Co. 14 I. C. C. Rep. 195. (June 25, 1908.)

Demand for reparation on shipments of lumber from Columbus, Miss., to Moline, Ill.

These proceedings were based on the order and report of the Commission in Central Yellow Pine Ass'n. v. Ill. Cent. R. Co., (369-A.), as confirmed by the Supreme Court, (369-B.) It did not appear that the rates in question had been paid under protest, and this was the only point in dispute.

Held, (Clements, C.), (a) that proceedings for reparation before the Commission were purely statutory and corresponded to actions at law sounding in tort;

(b) that in such cases, no protest was necessary, the violation of the law producing an injury and completing the offense.

Order allowing reparation prayed for.

685.—Nicola Co., et al. v. Louisville & N. R. Co., et al. 14 I. C. C. Rep. 199. (June 25, 1908.)

Demand for reparation on account of unreasonable rates on lumber from points in Louisiana, Mississippi, Alabama and Georgia to points of destination on the Ohio River.

These cases were based on the orders of the Commission in Tift v. Southern Ry. Co., et al. and Central Yellow Pine Ass'n. v. Illinois Cent. R. Co., et al. (269-A, 370.) Certain of the shipments on which claim was made were not between the specific points designated in the order, but they were between points as to which it was alleged circumstances were similar to those covered by the order, and to which a general advance of 2c. per 100 pounds, which the Commission had condemned, had been applicable.

Held, (Clements, C.), (a) that it was the Commission's duty and power to award reparation for damages suffered by the exaction of unreasonable charges, notwithstanding such charges had been in accordance with the published rates;

(b) that protest was not a necessary pre-requisite to the recovery of damages on account of the exaction of unreasonable charges;

(c) that the Commission could not award reparation on shipments not covered by the order relied upon until after full hearing, but that at such hearing, the similarity of conditions relied upon would afford a basis for forceful argument for like action by the Commission;

(d) that the limitation in Sec. 16, providing that claims accrued prior to the passage of the Act might be presented within one year, referred not to June 29, 1906, but to August 28, the latter being the date on which the Act was effective, in accordance with the joint resolution of June 30, and that as regards causes of action accruing prior to August 28, 1906, the claim might be presented at any time prior to August 28, 1907, although the cause of action might have accrued more than two years prior thereto;

(e) that the Commission could not determine in every case who was the ultimate sufferer by reason of the exaction of unreasonable rates or choose between the producer, the shipper, the consignee, or the consumer in awarding damages, but that orders of reparation must be made in favor of those who paid the freight charges, or on whose account the same were paid, or who were the true owners of the property transported during the period of transportation;

(f) that all the carriers joining in an unlawful advance of rates condemned by the Commission were not liable for the exaction of such rates, liability being restricted to those who participated in the transportation in question, and shared in the charges; the latter being joint and severally liable to the persons entitled to the fund.

Further proceedings to be taken in accordance with the foregoing conclusions.

686.—Marshall Oil Co. v. Chicago & N. W. R. Co., et al. 14 I. C. C. Rep. 210. (June 27, 1908.)

Complaint of unreasonable rate and classification of petroleum and its products from Mason City, Ia., to points in Minnesota, and to Ledyard, Ia., through Minnesota.

Petroleum was classed as third class and the complainant's case was based almost entirely on the fact that the State Railroad Commissions of Minnesota and Iowa had changed oil from third to fourth class as regards intrastate shipments. There was evidence that this had been done in order to enable independent shippers to compete with the Standard Oil Co.

Held, (Clements, C.), that although decisions of State Commissioners were worthy of consideration, that Commission was not justified in accepting their decision on an intrastate rate or classification as conclusive of the unreasonableness of the interstate rates, and that

the Commission would not make an order of such far-reaching effect as that here asked merely on such a showing as here presented.

Complaint dismissed.

687.—Oklahoma and Arkansas Coal Traffic Bur. v. Chicago, R. I. & P. R. Co., et al. 14 I. C. C. Rep. 216. (June 14, 1908.)

Complaint of unreasonable rate on coal from the Oklahoma-Arkansas coal fields to 78 cities and towns in Louisiana and Texas.

The complainants in these cases had a practicable monopoly of the Texas coal trade, and the carriers a monopoly of its transportation. The Commission, after investigation, and consideration of the various circumstances surrounding the traffic, held, in a number of instances, that the rates were unreasonable and fixed maximum rates to be applied in the future.

No order was entered, however, at the filing of the opinion, opportunity being given to defendants to adjust their tariffs.

688.—Forster Bros. Co. v. Duluth, S. S. & A. Ry. Co. 14 I. C. C. Rep. 232. (June 30, 1908.)

Demand for reparation for excessive charge on cross ties from Wilcox and Ridge, Mich., to South Chicago, Ill.

The rate charged was 13c. per 100 pounds. It appeared that 10 cars had been shipped by a competing company at but 10c., but this rate had been applied in error and subsequently the shipper had paid the full amount of the rate in effect at the time of the shipment. An official of the defendant had represented to complainant that he would be charged but 10c. on the shipments in question, and he had shipped in reliance on this. It appeared that certain of the shipments were made when a tariff rate of 12c. was in effect.

Held, (Clements, C.), (a) that although it was the duty of carriers' agents to furnish correct information as to the proper application of the lawfully established rates, yet, since the law required the tariffs to be open to public inspection, shippers were, therefore, charged with notice of the rate lawfully applicable;

(b) that the Commission could not consider an erroneous rate quotation made by an agent of a carrier as a basis for an award of reparation to the shipper who thereby suffered damages;

(c) that the charge exacted in excess of the tariff rate should be refunded without an order;

(d) that the rate of 13c. exacted was unreasonable and the excess of one cent on shipments proved would be awarded.

Order accordingly.

689.—General Electric Co. v. New York Cent. & H. R. R. Co., et al. 14 I. C. C. Rep. 237. (June 27, 1908.)

Application by a shipper for allowance on account of services rendered.

The complainant owned an extensive plant at Schenectady, N. Y.

This plant had been originally started in 1881, but during the 6 or 7 years preceding complaint, it had been greatly extended and now covered a large space on which there were a number of different buildings with switch tracks running between them, aggregating 12 miles of standard gauge track, and 7 miles of narrow gauge electric tracks. Connected with these tracks was a storage track capable of holding 500 cars. Originally, defendants had switched freight free of charge to and from the complainant's buildings, as it did for all shippers in the neighborhood having switch tracks. As complainant's track extended, however, it was found impracticable for the defendants to do the switching and complainants thereupon purchased switching engines and thereafter did their own switching. In view of the complicated network of tracks and of the broad and narrow gauge systems therein operated, it was practically impossible for defendant to do this switching. Defendants, therefore, delivered and received the cars on the storage track. It appeared that it cost complainant about 53c. per car to do the switching. There were about 112,000 carload movements a year in and out of complainant's plant, and for this expenditure complainant contended that they should be reimbursed by the defendant. After the assumption of the switching by complainants, defendants had, for a considerable time, paid them an allowance of 20c. per ton therefor, and there was evidence that they had agreed to do so. In 1906, defendants were indicted by the Federal Government for paying rebates to the complainant under the foregoing arrangement and therefore refused to make them the agreed allowance.

Held, (Harlan, C.), (a) that the Commission had no power to enforce specific performance of contractual obligations or to award damages for breach of an agreement;

(b) that the handling of the cars by complainant within its plant was not a carrier's service which complainant could have required him to do as part of its contract of transportation;

(c) that carriers were under no duty to extend their transportation obligations with the extent of great industrial plants like that of the complainant;

(d) that the obligation of defendants as common carriers involved only delivery and acceptance of carload shipments at some reasonable and convenient point of interchange, and that the storage track in question was such a point;

(e) that complainant was entitled to no compensation for doing that which defendant was under no obligation to do, and which complainant did not and could not permit it to do.

Complaint dismissed.

690.—*Solvay Process Co. v. Delaware, L. & W. R. Co., et al.* 14 I. C. C. Rep. 246. (June 30, 1908.)

Application by a shipper for allowance on account of service rendered.

This was a case in all essential respects similar to *General Electric Co. v. New York Cent. & H. R. R. Co.*, (689.)

Held, (Knapp, Ch.), that in accordance with the decision in the above case, the complaint should be dismissed.

691.—*Eichenberg v. Southern Pac. Co., et al.* 14 I. C. C. Rep. 250. (June 24, 1908.)

Complaint of discrimination and preference in favor of a competitor in facilities for exporting cotton seed products by means of a lease of terminal facilities.

The Southern Pacific Co., one of the defendants, was a holding company, controlling the Southern Pacific Terminal Co., (hereafter called the Terminal Co.), the Galveston, Harrisburg & San Antonio Ry. Co., and a number of other lines running into Galveston, known as the Southern Pacific System. The Terminal Co. was a Texas corporation organized in 1901, and had power to own wharves and piers, and to operate docks, piers and terminal facilities at Galveston for the use of the Southern Pacific Co., and steamship systems. In 1906, the Terminal Company had constructed a pier on an unoccupied dock and agreed to give possession of such pier to E. H. Young for five years and from year to year thereafter, at an annual rental of \$15,000.00 per year. The contract provided that Young should route all his shipments over the lines of the Terminal Company except where better rates were obtainable by competing lines, and in this case, he should give notice of the better rate obtainable to the Terminal Co., and give the terminal line the option of meeting the proposed rates. By means of this lease, Young was enabled to avoid the payment of the published wharf charge of 1c. per 100 pounds, which was charged against all other shippers except him, and Young collected this 1c. per 100 pounds on all the shipments coming over his wharf. By reason of the limited wharf space at Galveston it was not possible for defendants to furnish other shippers with facilities similar to those furnished Young. Young did not receive the revenue for the use of tracks along his pier nor pay switching charges onto his tracks, and in other respects his privileges at the pier were not as extensive as those in case of an ordinary lease.

Held, (Knapp, Ch.), (a) that the Commission was not concluded by the form, but looked to the substance of relations between corporations engaged in interstate commerce, and that the Southern Pacific Co., being identical in management and ownership with the railroads of the Southern Pacific System, was subject to the Act;

(b) that the same was true of the Terminal Co., which was for the purposes here in question part of the Galveston, Harrisburg & San Antonio R. Co., and a necessary element and facility of the interstate transportation in which the Southern Pacific System was engaged;

(c) that it was doubtful as to whether the agreement in question really amounted to a lease to Young in view of the form of the

instrument and of the power of the Terminal Co. over the wharf property at Galveston;

(d) that the giving of an undue preference or advantage to any shipper is condemned by the Statute, and it can make no difference that such preference is governed by a contract which purports to be a lease of property;

(e) that in relieving Young from wharfage charges exacted from all other shippers and in giving him use of its docks to store his products and sack and grind them, which it could not give or declined to give to other shippers, the Terminal Co. was, according to him an undue preference which was contrary to the principle of equality which the law sought to enforce.

Order directing the Southern Pacific Terminal Co. and the Galveston, Harrisburg & San Antonio Ry. Co. to desist from granting to Young preferences through failure to exact from him wharfage charges collected from other shippers, and from allowing him the exclusive use of wharf space for storing cotton seed products which was denied other shippers under substantially similar circumstances.

The question of reparation was postponed.

Motion for temporary injunction to annul order denied. See 22 Ann. Rep. 23.

692.—National Petroleum Ass'n. v. Ann Arbor R. Co., et al. 14 I. C. C. Rep. 272. (June 22, 1908.)

Complaint of unreasonable rates on petroleum between points in Official Classification Territory.

This company was directed practically at all the rates on petroleum in the Official Classification Territory, 51 carriers being joined as defendants. The gist of the prayer was that the rates should be reduced to the basis of 80% of sixth class in earloads, and to fifth class in less-than-earloads. No rate between any particular points was attacked, and the complainant had evidently been drawn prior to Jan. 1, 1907, on which date the carriers had made extensive alterations in their rates in pursuance of the oil investigation conducted during the previous year. It did not appear that under the rates at present in force there was any undue preference of the Standard Oil Co.

Held, (Knapp, Ch.), that in case of an omnibus complaint of this nature, the Commission could not reduce by one sweeping order a whole class of rates concerning which no complaints had been made and against which no complaints had been offered.

Complaint dismissed without prejudice.

693.—National Petroleum Ass'n. v. Chicago, M. & St. P. Ry. Co., et al. 14 I. C. C. Rep. 284. (June 27, 1908.)

Complaint of unreasonable earload rate on petroleum and its products from Chicago, and Peoria, Ill., and Milwaukee, Wis., to St. Paul, Minneapolis, and Duluth, Minn.

At the time of the filing of the complaint, the rate from Cleveland

where complainant was situated, to St. Paul, Minneapolis and Duluth, was made by the combination of the Cleveland-Chicago rate of 13½c., plus the 20c. rate from Chicago. But before the hearing, a through rate of 30c. was put in force and shipments were no longer made on this 20c. combination. The carriers east of Chicago were not joined. The real subject matter of the complaint was the through rate from Cleveland.

Held, (Knapp, Ch.), (a) that the reasonableness of the new through rate was not before the Commission in this proceeding;

(b) that there was no evidence upon which the 20c. rate from Chicago could be found unreasonable.

Complaint dismissed without prejudice.

694.—National Petroleum Ass'n. v. Chicago, M. & St. P. Ry. Co., et al. 14 I. C. C. Rep. 287. (June 27, 1908.)

Complaint of unreasonable rate on petroleum and its products in carloads from Chicago, Ill., to Omaha, Neb.

The rate in question was 27c. per 100 pounds. After consideration of the distance and other important factors, and after comparison with rates on other commodities,

Held, (Knapp, Ch.), that the 27c. rate was unreasonable and should not in the future exceed 24 3-10c.

Order accordingly.

695.—Struthers-Wells Co. v. Pennsylvania R. Co., et al. 14 I. C. C. Rep. 291. (June 27, 1908.)

Complaint of failure to establish through route and joint rate from Warren, Pa., to Cadillac, Mich., via Buffalo, N. Y., and demand for reparation by reason of a charge of combination rates.

The combination rate charged the complainant was 30c. per 100 pounds. This shipment proceeded over the route designated by complainant although over another route the rate was but 20½c. After the filing of the complaint, defendant put in force a rate of 20½c. over route in question. The defendant's tariffs applicable to the shipment in question were vague and uncertain.

Held, (Knapp, Ch.), (a) that the tariff should be corrected;

(b) that where the shipper gave routing directions, the carrier was bound to route according to his instructions, and to charge the rate applicable even though it was higher than that over some other route between the same points;

(c) that the 30c. rate appeared, however, to be unreasonable and reparation should be awarded to the amount of 9½c. per 100 pounds with interest.

Order accordingly.

696.—Greater Des Moines Committee v. Chicago, G. W. R. Co., et al. 14 I. C. C. Rep. 294. (June 24, 1908.)

Complaint of unreasonable rate on lumber in carloads from Arkan-

sas and Texas points to Des Moines, Ia., of preference of Omaha, Neb., by lower rate and of violation of Sec. 4 in a lower rate to Chicago over the same route.

The competitive conditions at Chicago were very different from those at Des Moines. Omaha was a basing point and there was evidence that there was stronger competition there than at Des Moines. Rates at both Omaha and Des Moines had been increased during the last few years, however.

Held, (Lane, C.), (a) that the Commission saw no commercial or transportation reason why basing points should be entitled to any different treatment from any other points, or why particular points should enjoy lower rates because carriers, for their own convenience, made rates to and from such points;

(b) that although the less rate for the greater distance to Chicago was warranted, no greater rate should be charged from Des Moines than from Omaha.

Order accordingly.

697.—Burnham Co., et al. v. Chicago, R. I. & P. Ry. Co., et al.
14 I. C. C. Rep. 299. (June 24, 1908.)

Complaint of unreasonable rates from the Atlantic Seaboard to the Missouri River cities, and of preference of St. Paul and Minneapolis by lower rates to those points.

The complaint, testimony and argument were really directed against the rates charged west of Chicago and the Mississippi River crossings. It appeared that the rates to St. Paul and Minneapolis were controlled by competition of water and Canadian rail lines. Through rates to Missouri River cities from the Atlantic were made by adding together proportional rates to Mississippi River crossings with local class rates from these crossings to the Missouri River.

Held, (Clark, C.), (a) that lower rates to St. Paul and Minneapolis were proper by reason of the competition at those points;

(b) that the parts of the through rates west of the Mississippi River were "separately established rates applied to through transportation," and could be dealt with by the Commission separately;

(c) that these latter rates were unreasonable and should be adjusted by reduction to figures given.

Order accordingly.

On November 6, 1908, the Circuit Court for the N. D. of Illinois (Judges Grosscup, Seaman and Baker) issued a temporary order restraining the order of the Commission in this case.

698.—St. Louis Traffic Bureau v. Chicago, B. & Q. R. Co. 14 I. C. C. Rep. 317. (June 29, 1908.)

Complaint of discrimination and preference in favor of elevator owners at Omaha and Council Bluffs, as against dealers at St. Louis, by payment of elevation allowance.

The allowances in question were the same as dealt with by the Com-

mission in *Re Allowances to Elevators* (351). It appeared that traffic conditions had greatly changed since the issuance of the orders in the first two cases above referred to. The payment of the allowance, however, would seem to have been forced by the interest of the Union Pacific R. Co., which terminated at Omaha, and of the Chicago Great Western, which originated there, to have grain from western points proceed east through Omaha. The allowance in question appeared to be more than a mere transfer charge, since grain was weighed and inspected in the elevator and held longer than 10 days, to be sent forward as the shipper directed. This allowance was not restricted to Peavey & Co., but was granted to all elevators at Omaha and Council Bluffs. It gave, however, the Omaha dealer an advantage of $\frac{3}{4}c.$ over the shipper at St. Louis, since it applied only to grain re-shipped to eastern points from Omaha, and also gave the same advantage to those using elevators at Omaha over shippers unloading by wagons or at the mills. The defendants all testified that they paid the allowance not as a transfer charge, but because compelled by competitive conditions.

Held, (Prouty, C.), (a) that although at the time of the previous decisions the payment of the allowances there permitted was proper, yet by reason of changed conditions, any payment to elevators at Omaha now worked an undue discrimination;

(b) that this allowance, not being open to the whole public but only to such of the public as had occasion to use elevators at Omaha, was illegal;

(c) that in order to promote prompt release of its cars, a carrier might properly provide storage or transfer facilities free, or other similar services pertaining entirely to transportation, but the service in question was not an incident of transportation nor performed for the carrier's benefit;

(d) (semble) that there was no difference in principle between giving of a service and the giving of money with which to buy the service, and the Commission had equal jurisdiction to prohibit the granting of the one and the payment of the other.

Order requiring defendants to desist from payments in question at Kansas City, and other Missouri River points.

Harlan, C., and Clark, C., concurred, on the ground that the allowances in question resulted in an undue discrimination in favor of shippers who owned elevators.

699.—*Flaccus Glass Co. v. Cleveland, C. C. & St. L. R. Co.* 14 I. C. C. Rep. 333. (June 30, 1908.)

Complaint of unreasonable rate on lime from McVittys, Ohio, to Tarentum, Pa., and demand for reparation.

It appeared that through a mistake of an agent, certain cars had been misrouted, resulting in an overcharge. This defendants conceded they should refund. The other ground relied upon by complainant was that the shipments in question had proceeded on the sum of

the local rates, no through rate being in force and that shortly after these shipments, a lower through rate had been put in force.

Held, (Knapp, Ch.), (a) that the overcharge resulting from misrouting should be refunded;

(b) that it was not enough to entitle the complainant to reparation to show merely that since certain shipments were made, a joint through rate had been put in force which was lower than the former combination of locals, since this fact itself created no presumption against the carriers.

Order accordingly.

700.—Flint & Walling Mfg. Co. v. Lake Shore & M. S. Ry. Co., et al. 14 I. C. C. Rep. 336. (June 27, 1908.)

Demand for reparation for unreasonable rate on water tanks and sub-structures from Kendallville, Ind., to Beaver Dam, Wis.

The rate exacted was the published through rate but this exceeded the sum of the local rates by 6½c. per 100 pounds. No explanation of this was offered by the defendants, but it was insisted by them that the Commission had no jurisdiction to award reparation where the rate charged was the tariff rate.

Held, (Prouty, C.), (a) that the Commission had jurisdiction to award damages although the rate exacted was the tariff rate;

(b) that no explanation having been offered as to why the through rate should exceed the sum of the locals, reparation would be ordered on the basis of 6½c. per 100 pounds.

Order accordingly.

701-A.—Ullman v. Adams Express Co., et al. 14 I. C. C. Rep. 340. (June 25, 1908.)

Complaint of unreasonable express rates on raw furs in boxes and bales from St. Paul to New York.

The rate in question was \$4.50 per 100 pounds. This rate was reduced 33 1-3% on exported furs and the complainant, located at New York, alleged this as a ground of discrimination against him in favor of shippers at interior points.

Held, (Prouty, C.), (a) that the \$4.50 rate was unreasonable and should be reduced to \$3.50;

(b) that defendants might properly allow a less inland rate on the exported goods than the regular domestic rate, but that the inland portion should in all cases be published and adhered to and allowed to all shippers desiring to use it.

Order accordingly.

701-B.—Ullman v. Adams Express Co., et al. 14 I. C. C. Rep. 585. (Nov. 14, 1908.)

Petition for rehearing in the above.

The testimony in this case had originally been taken before a single Commissioner. At the close of the testimony, complainant was

allowed 15 days in which to file his brief, and defendants 10 days additional to file theirs. The time limit of defendants expired June 21, and the case was decided June 25 before the filing of the brief by any of the defendants. The latter insisted that by deciding the case before receiving their briefs they had been denied the full hearing required by Section 15. Complainant had not filed his brief until June 13, and he consented that the defendants might take additional time for filing theirs. Defendants had asked for an oral argument, but this fact had never been brought to the Commission's attention.

Held, (Prouty, C.), (a) that cases before the Commission were not like private law suits, and the parties did not stand like private litigants before the Courts, the questions upon which the Commission passed being almost invariably of general public interest, in which the consequence to the individual was usually insignificant as compared to that to the general public, and when once a complaint was filed it must be promptly heard and disposed of, and could not be postponed to suit the convenience of the parties;

(b) that oral argument would usually be granted when asked for, but that such was not necessary to the full hearing required by Section 15;

(c) that the Commission had not found any reason for changing the conclusion heretofore reached.

702.—Hecker Milling Co. v. Baltimore & O. R. Co., et al. 14 I. C. C. Rep. 356. (June 24, 1908.)

Complaint of preference of western and foreign millers of grain by reason of adjustment of export rates on grain and flour.

Complainant's mill was situated at New York. Defendants' rate from Chicago and similar points to New York on domestic grain and its products was 17½c., while exported grain took a rate of 13c., exported flour of 14c., and other products of 15c. As a result of this arrangement, the western miller had an advantage of 3½c. in the foreign market and the foreign miller of 4½c. Complainants asked that they be given what was equivalent to a milling-in-transit rate at New York on export flour, but by reason of defendant's situation, it seemed very difficult to keep a check on the movement of the grain into the mill and subsequent movement out, especially as complainant shipped in a great deal of grain by canal. Defendants objected that to allow the privilege in question would enable complainant to take improper advantage of them and would also give rise to many complications as to divisions of rates among the incoming lines, and as to apportionment of charges to complainants as between domestic and export shipments.

Held, (Prouty, C.), (a) that the rate adjustment in question produced an undue preference of the western and foreign miller over complainant;

(b) that defendants had no right to accord to any other mills a

lower rate on export flour than they accorded to complainant on the grain subsequently ground by it into export flour, and an order should be issued requiring defendants to desist from this practice, provided that the defendants might establish necessary regulations to make certain that the grain on which the export flour rate was applied was actually exported as flour or other grain products, with leave to defendants to impose a proper charge to cover the execution of such regulations.

Order accordingly.

703.—Star Grain & Lumber Co., et al. v. Atchison, Topeka & S. F. Ry. Co., et al. 14 I. C. C. Rep. 364. (June 23, 1908.)

Complaint of failure to establish through routes and joint rates on yellow pine lumber from producing mills in Arkansas, Louisiana, Missouri and Texas, on the lines of the Cotton Belt System and other co-defendants, to points on the line of the principal defendant, the Atchison, Topeka & Santa Fe R. Co.

The rates and routes in question had previously been in force, some of them until 1903 and 1904, and those from points on the Cotton Belt until October 1, 1907. The reason for the cancellation on these dates was the objection by the Atchison, T. & S. F. R. Co., to the divisions received of the through rates. There appeared to be no serious objection by the latter to the re-establishment of these rates, provided it received a satisfactory division, and the principal question before the Commission was with regard to a determination of the proportion of the rates to the respective carriers. The Atchison, Topeka & Santa Fe R. Co. insisted on a large share for itself, on the ground that lumber carried over the routes in question would deprive it of traffic from producing mills on its own line. It contended that it could amply supply the market from these mills.

Held, (Harlan, C.), (a) that the opportunity to buy in a widely extended market was valuable to merchants, and a carrier had no right, by refusing through routes and rates, to restrict or circumscribe this opportunity, merely on the ground that it could supply similar commodities from points on its own line;

(b) that although the Commission would not exercise its authority to establish through routes or rates on light or unsubstantial grounds, or merely to suit the whims or fancies of shippers in seeking unusual markets in which to purchase their supplies, the present was a case where the through routes should be re-established, at least with regard to points on the Cotton Belt System;

(c) that with regard to through routes asked from points on other lines, the evidence was not sufficient to warrant the Commission in taking action;

(d) that since by reason of the establishment of these routes and rates the Atchison, T. & S. F. R. Co. was forced to permit the introduction into the market of commodities which would compete with

those originating on its own line, a strong equity arose in its favor for a large division of the through rates;

(e) that for the present, the Commission was not willing to recognize the rights of small tap lines, owned by shippers, to divisions of through rates, even though these lines were common carriers.

Order accordingly, prescribing division of through rates.

704.—Corn Belt Meat Producers' Ass'n. v. Chicago, B. & Q. Ry. Co., et al. 14 I. C. C. Rep. 376. (June 27, 1908.)

Complaint of preference of cattle shippers from Missouri River points, over those at Iowa points by refusal to allow at the latter points feeding-in-transit privileges accorded at the former, and of unreasonable rates on live stock from Iowa points to Chicago.

The defendants permitted cattle to be stopped off for fattening at Missouri River points,, but refused to allow this privilege at Iowa points. Rates from Iowa points to Chicago were somewhat greater than from Missouri River points, but at the latter, competitive conditions were different. The complainants relied upon a comparison with rates between other points and of rates on other commodities, and also on the fact that State Commissions had ordered lower rates than those in force from Iowa points.

Held, (Prouty, C.), (a) that the feeding-in-transit privileges accorded the Missouri River points should be allowed the Iowa points;

(b) that in view of a number of considerations specified, making shipment of cattle extra expensive, the rates from the Iowa points were not unreasonable, but the grouping should be revised as indicated.

Order accordingly.

705.—Wholesale Fruit and Produce Ass'n. v. Atchison, T. & S. F. Ry. Co. 14 I. C. C. Rep. 410. (June 27, 1908.)

Complaint of unreasonable regulation requiring consignees to unload packages of fruit and vegetables or to bear the expense of unloading same.

Prior to January 1, 1898, the defendants had loaded and unloaded at their own expense in Chicago, carloads of fruits and vegetables shipped in packages, but since that date, they compelled shippers to bear this expense. The fruit and vegetable business at Chicago was of three classes: Less than carload business in which case the packages were always unloaded and delivered by the carrier, carload business where the whole carload was owned by one consignee, and the so-called "granger" business, where shipment was made by one consignor for the purpose of obtaining carload rates, but where the carload was owned in part by different individuals. A number of the carriers had formerly provided a fruit platform where they delivered and sorted the shipments even in case of the granger cars. The expense of the latter method was about 1c. per 100 pounds over the expense where delivery was made at the car doors. In some

cases, also, the railroads now required the consignees to go into the cars and pick out their own packages in case of carload freight.

Held, (Prouty, C.), (a) that rules and regulations prescribing who should load and unload cars of freight were rules and regulations which affect rates and within the control of the Commission under Sec. 10;

(b) that there is no absolute duty on the part of carriers to unload carload freight, nor could any general invariable rule be laid down applying to all carload business, but the regulations must vary in different localities and with different commodities;

(c) that with regard to carload freight, it was unreasonable to require consignees to go into the car to get their freight, whether the entire car was owned by one consignee or by several, but delivery in all cases might be made at the car doors;

(d) that the carrier was under no obligation to provide platforms and to assort carload freight, and that if it chose to do so, it might make a reasonable charge for the service in addition to the freight rate;

(e) that a reasonable charge in this case was 1c. per 100 pounds.
Order accordingly.

706.—California Commercial Ass'n. v. Wells, Fargo & Co. 14 I. C. C. Rep. 422. (June 22, 1908.)

Complaint of unreasonable regulation of defendant denying bulk rates on consolidated packages to forwarding agents, and demand for reparation.

The defendant had in effect special rates for bulk shipments which were analogous to carload freight rates. By Rule 3, in its published tariffs, it provided that these rates should be applicable only where the bulk shipments were offered by one consignor, and consigned to one consignee, and only in case the latter was the real owner thereof. It required satisfactory evidence to be furnished that the shipments were not offered or consigned to forwarding agents.

Held, (Lane, C.), (a) that the Commission had power to determine whether the practice or regulation in question was just and reasonable;

(b) that complainant was a proper party to institute the proceedings, and was not a common carrier;

(c) that under Sec. 2, the only discriminations proper between large and small shipments were those based on the difference in the cost of service;

(d) that the regulation in question worked an unjust discrimination against complainants and should be discontinued, and that reparation should be awarded on the basis of the difference between carload and less-than-carload rates on shipments proved, where complainants had been denied carload rates.

Harlan, C., and Knapp, Ch., dissented.

707.—Export Shipping Co. v. Wabash R. Co., et al. 14 I. C. C. Rep. 437. (June 22, 1908.)

Complaint of unreasonable regulation denying to complainants, forwarding agents, carload rates on shipments assembled by them and consigned under a single bill of lading to a single consignee, and demand for reparation.

Defendant's tariffs provided by Rules 5b and 15a. in effect that carload rates would not be allowed to forwarding agents.

Held, (Lane, C.), (a) that the rules in question were unreasonable and discriminatory and should be abolished;

(b) that reparation should be awarded equal to the difference in the amount collected by defendants and the amount which would have been collected if each shipment had been treated as an entirety and the carload rate assessed in each case.

Order accordingly.

Knapp, Ch., and Harlan, C., dissented. In these cases, the majority was evidently of the opinion that to allow the carload rates to forwarding agents would tend to benefit the small shipper against the large one. The minority, on the other hand, evidently considered that small localities would be unduly prejudiced over large commercial centers by the encouragement of forwarding agents.

708.—Cox Bros. v. St. Louis & San F. R. Co. 14 I. C. C. Rep. 464. (July 1, 1908.)

Complaint of discrimination against complainant in refusing to furnish sufficient cars for hay from Afton, Okla., to St. Louis, while furnishing cars to corn shippers at Afton and to shippers of hay consigned to other destinations.

The period covered by the complaint was one of great congestion of traffic. It also appeared that at St. Louis the conditions were such that cars of hay consigned there would practically go out of service by adding to the congestion, while cars of grain might be unloaded and returned immediately.

Held, (Lane, C.), that the discrimination in question was not undue.

Complaint dismissed.

709.—Kansas City Cotton Mills Co. v. Chicago, R. I. & Pac. R. Co., et al. 14 I. C. C. Rep. 468. (June 8, 1908.)

Complaint of unreasonable rate on raw cotton from Oklahoma and Texas to Kansas City, and of preference of southern mills by lower rates on cotton fabric.

At the time the complaint was drafted, the rate on cotton was 65c. per 100 pounds, and the rate on fabric, 50c. Immediately preceding the filing of the complaint, however, the rates were altered so as to make both the rates 50c., thus removing the objectionable differential. It appeared that by reason of the adjustment of the export rates from Texas and Oklahoma, no cotton could reasonably

be carried from Texas to Kansas City in competition with the Oklahoma cotton.

Held, (Lane, C.), that the rates in question at the time of the hearing were neither unreasonable nor discriminatory.

Complaint dismissed.

710.—**Florida Fruit, etc., Ass'n. v. Atlantic Coast Line R. Co., et al.** 14 I. C. C. Rep. 476. (June 25, 1908.)

Complaint of unreasonable rates on oranges, grape-fruit, pine-apples, vegetables and strawberries, and of unreasonable refrigeration charges on fruits and vegetables from Florida to northern markets.

The rates in question were constructed on the basing-point system, with Florida points as the bases. The rates from the points of production to the bases were prescribed by the Florida Commission. In an opinion reviewing the transportation conditions applicable to the commodities in question, commenting on the various items of the cost of production and of transportation, and making comparison with rates on similar commodities from California points,

Held, (Prouty, C.), (a) that with regard to oranges and grape-fruit, the part of the rate for points within the State of Florida was not unreasonable, even when applied to interstate shipments;

(b) that as to these same commodities, the carload rates from basing points to northern points were unreasonable and should be reduced to figures named, and other adjustments indicated should be put in effect;

(c) that the rail and water rates on vegetables were excessive, and should be reduced to figures given;

(d) that the minimum carload weight on strawberries should be reduced;

(e) that refrigeration charges in question were not excessive.

Order accordingly.

711.—**Macon Grocery Co., et al. v. Atlantic C. L. R. Co., et al.** 163 Fed. 736. C. C. S. D. Ga. W. D. (July 29, 1908.)

On demurrer to plea to jurisdiction in bill for injunction to prevent putting into effect of alleged unreasonable schedule of rates.

The rates were to take effect on the first of August. The defendants were not citizens of the district in which the suit was brought, but operated roads in the State of Georgia and in the Southern District thereof, and were found and served therein.

Held, (Speer, D. J.), that this being the district of complainants' residence and the defendants being found therein might be therein sued; that these defendants "cannot plead that they are non-residents for the purposes of the litigation here, and yet come into this territory, and control the price of everything upon which the comfort and the very life of the people depend, so far as transporta-

tion is concerned, and then deny the right of those wronged to be heard."

Demurrer sustained and plea to jurisdiction overruled.

712.—**Macon Grocery Co., et al. v. Atlantic C. L. R. Co., et al.**
163 Fed. 738; C. C. S. D. Ga. W. D. (Aug. 1, 1908.)

Demurrer to suit for injunction to restrain enforcement of an increased schedule of rates, alleged to be unreasonable.

The respondents, members of the Southern Freight Ass'n., had made a general reduction in rates in February, 1905. In the summer of 1908, they filed tariffs effective August 1st, making a general advance in these rates. This bill was filed on July 25, 1908, and heard on the 28th and the 29th. A plea to the jurisdiction had been overruled in an oral opinion, and a preliminary injunction granted.

Held, (Speer, D. J.), that the Courts had power to enjoin the putting in effect of advanced rates prior to any investigation by the Commission as to their reasonableness.

Demurrer overruled, and permanent injunction granted, providing the complainants within ten days made complaints to the Commission requesting that body, if necessary, to fix maximum rates or give other necessary assistance in accordance with the law.

At a later date Circuit Judge Pardee set aside this injunction, taking a bond from the carriers to refund charges finally found to be excessive.

As to the curious situation resulting from the issuing of Judge Speer's injunction, see the *Railway World* for Aug. 7th, 1908, p. 684.

713.—**United States v. Delaware & Hudson Co., et al.** 164 Fed. 215. C. C. E. D. Pa. (Sept. 10, 1908.)

Bills in equity and petitions for mandamus to restrain defendants from transporting coal mined by them or under their authority or in which they had an interest, direct or indirect.

There were six defendants in six separate cases, all of these being heard together both on the bills in equity and on the petitions for mandamus. These defendants were the Delaware & Hudson Co., the Erie R. Co., the Central Railroad of New Jersey, the Delaware, Lackawanna & Western R. Co., the Pennsylvania R. Co., and the Lehigh Valley R. Co. The Delaware & Hudson Co. directly owned coal lands, having been authorized by an Act of the State of Pennsylvania of 1823 to purchase the same and to employ its capital in transporting to market coal mined from its lands. The Delaware, Lackawanna & Western R. Co. also owned coal lands and mined, transported and sold its own coal in pursuance of an Act of the Legislature of Pennsylvania of 1849. Certain of the other defendants owned practically all the stock in coal companies, others owned a majority of stock, and still others, a minority. In one of the answers, it was alleged that the coal mined was sold to third persons at the mines prior to transportation thereof, so that at the

time of the transportation, defendant had no interest of any kind therein, except as incident to its obligation and rights as a common carrier. The facts were not disputed, and the main question before the Court was whether the Commodities Clause of Sec. 1 of the Act was constitutional and whether it prohibited the transportation of coal mined or owned by the defendants or by the companies in which they held stock.

Held, (Gray, C. J.), (a) that if the Commodities Clause was constitutional, the defendants were thereby prohibited from transporting any of the coal in question;

(b) that the power to regulate commerce did not include the right to enforce a prohibition of commerce under all circumstances;

(c) that the power to regulate commerce was subject to the provisions of the Fifth Amendment and could not be exercised in such a way as to amount to confiscation;

(d) that merely by calling a previously lawful pursuit an obstruction to interstate commerce, Congress could not escape the inhibitions of the Fifth Amendment in decreeing its destruction;

(e) that the question as to whether or not a given regulation of commerce was a reasonable and legitimate one, or was an unreasonable regulation forbidden by the Fifth Amendment, was for the Courts;

(f) that the effect of the legislation in question on these defendants would be either to deprive them of the right to transport their coal or to force them to sell their stock at so great a sacrifice as to amount to confiscation;

(g) that the legislation in question, as applied to the facts before the Court, was an unreasonable regulation of commerce and, therefore, unconstitutional.

Bills dismissed and petitions denied.

Dallas, C. J., concurred. Buffington, C. J., dissented.

714.—**United States v. Clark, et al.** 164 Fed. 75. D. C. W. D. Mo. W. D. (May 29, 1908. Additional opinion, July 7, 1908.)

On separate demurrer of defendant Clark to indictment for conspiracy to violate the laws of the United States in the issuance to, and use of free transportation by, persons not authorized to accept the same.

The indictment alleged that the defendant, Clark, was chief clerk in the office of the General Superintendent of the Missouri Pacific R. Co., and, as such, was vested with power to issue free transportation. The other defendants were Nick Nistas and Louis Agnes, who were Greek laborers engaged in the business of procuring laborers to work on railroads. The indictment alleged that the defendant Clark, in pursuance of an unlawful agreement, had issued to the other defendants free passes for themselves and their laborers which had been used by and sold to persons not entitled under the Act to free transportation. In support of the demurrer, defendant contended (1) that

the acts charged required participation by all those charged therewith, and therefore, could not be the subject matter of a conspiracy or punishable by the punishments prescribed for a conspiracy in addition to those prescribed for the commission of the acts alleged as the basis for the conspiracy; (2) that the carrier itself could only be guilty of giving free transportation and that agents were not themselves guilty of such offense; (3) that guilty knowledge could not be attributed to the carrier where the agent was in a conspiracy to defraud the carrier, and that as guilty knowledge was essential to the commission of the offense, no such offense had been committed by the carrier, and, therefore, there had been no illegal conspiracy to commit it.

Held, (Pollock, D. J.), (a) that the present case was one in which parties had been engaged who were not essential to the commission of the offense against the United States, the basis of the conspiracy, and that therefore a conspiracy on the part of the defendants was properly charged;

(b) that if the railroad was not guilty of a violation of the law, it was because Clark was guilty of a conspiracy to cause a violation on its part;

(c) (semble) that the provisions of Section 1, as amended, provided exclusive penalties for giving free passes. (See, however, the discussion of the use of the word "knowingly" in additional opinion, this word not occurring in Section 1 as amended, and being found only in the Elkins Act as amended).

Demurrer overruled.

715.—Memphis Cotton Oil Co., et al. v. Illinois Central R. Co., et al.
164 Fed. 290. C. C. W. D. Tenn. W. D. (Sept. 29, 1908.)

Plea to jurisdiction in bill for injunction to restrain defendants from putting into effect, on October 1, 1908, increased interstate rates.

Complainants were residents of Tennessee, and defendants citizens of Illinois and Kentucky.

Held, (McCall, D. J.), that the suit being one arising under the laws of the United States might be brought only in the state in which defendant was incorporated.

Plea sustained.

716.—Platten Produce Co. v. Chicago, M. & St. P. R. Co., et al.
14 I. C. C. Rep. 512. (Nov. 10, 1908.)

Complaint of unreasonable rate on cabbages, potatoes and onions from Green Bay, Wis., to Poplar Bluff, Mo.

The rate in question was 34½c. per 100 pounds. The only evidence of its unreasonableness was to the effect that on similar shipments via the Chicago & N. W. R. Co. only 27c. had been charged. There-

was no tariff authority for this 27c. rate, the only tariff rate being 35½c. The tariffs were obscure and complicated.

Held, (Knapp, C.), that the tariffs should be corrected.

Complaint dismissed.

717.—Flint & Walling Mfg. Co. v. Grand Rapids & I. R. Co., et al.
14 I. C. C. Rep. 520.

Complaint of violation of Section 4, and of unreasonable rate on tanks and sub-structures from Kendallville, Ind., to Gallatin, Tenn., higher than the rate to Nashville, a more distant point, and demand for reparation.

The reason for the difference in rates alleged was the competition between Louisville and Nashville.

Held, (Prouty, C.), that the complaint should be dismissed.

718.—Beekman Lumber Co. v. St. Louis S. W. R. Co., et al. 14
I. C. C. Rep. 532. (Nov. 10, 1908.)

Complaint of unreasonable charge on lumber at East St. Louis and of exaction of car service charges, and demand for reparation.

The reconsignment charge was \$5.00 per car, and was exacted in accordance with the published tariffs. It was not shown to be unreasonable. The tariff provided for reconsignment without any requirement for prepayment of freight or guaranty of the same. The complainant was not on the credit list of the carriers and the exaction of the car service charge was during the period when the carrier was negotiating with the consignee as to the question of the payment of freight charges.

Held, (Clements, C.), (a) that the demand for reparation on account of the exaction of unreasonable reconsignment charges should be denied;

(b) that "where a carrier provides in its tariff for reconsignment without any requirement for prepayment of freight or guaranty of the same, it may not lawfully charge demurrage for time during which it holds the shipment while parleying with its connections as to advancement of its freight charges," and the charges exacted should be refused.

Order accordingly.

719.—Union Pacific T. Co. v. Pennsylvania R. Co., et al. 14 I. C. C.
Rep. 545. (Nov. 14, 1908.)

Complaint of unreasonable rate and classification of cheap china.

Earthenware or crockery was classified at 20% less than third class L. C. L., no matter in what form of package. Chinaware was rated first class in boxes and second class in casks. The defendants shipped very cheap kind of china and asked that on grades not exceeding in value \$12.00 per 100 pounds, the crockery rate be allowed.

Held, (Prouty, C.), (a) that although there were many arguments in favor of introducing classification on the basis of value, the Com-

mission was not prepared to do so here, mainly by reason of the temptation for fraud on the part of shippers;

(b) that china in boxes should be reduced to second class.

Order accordingly, effective February 1, 1908.

720.—*Kehoe & Co. v. Nashville C. & St. L. R. Co., et al.* 14 I. C. C. Rep. 555. (Nov. 10, 1908.)

Demand for reparation on account of improper exaction of demurrage charge on hay.

A carload of hay was shipped by complainants from Nashville, Tenn., to Albany, Georgia, the consignee refused to accept it, and the car was delayed at Albany, giving rise to the exaction of the demurrage in question, complainants in addition to demanding reparation, asked that the Commission formulate a rule under which the railroad could not assess demurrage on a rejected shipment before the shipper was notified of the rejection, or after the shipper had furnished the railroad forwarding orders for other disposition of the rejected shipment.

Held, (Lane, C.), that assuming that the Commission had power to impose the rule in question, it was not reasonable to do so here.

Complaint dismissed.

721.—*American Lumber Mfg. Co. v. Southern Pac. Co. et al.* 14 I. C. C. Rep. 561. (Nov. 10, 1908.)

Demand for reparation on account of imposition of unreasonable charge on lumber shipments from Paper Mills, Ore., to Queen Junction, Pa.

The complainant had ordered a car of 40,000 pounds capacity, and had been furnished one of 80,000 lbs. The defendant's tariffs provided for a 60,000 pounds minimum as to 80,000 pound cars, and complainant was charged on this basis. He contended that he should have been charged only on the minimum applicable to 40,000 pound cars.

Held, (Lane, C.), that where a larger car was furnished than that required by the shipper, the charge should be based on the minimum applicable to the car required and not to that furnished.

See also *Carstens Co. v. Northern Pac. R. Co., et al.* 14 I. C. C. Rep. 577. (Nov. 24, 1908.)

722.—*Anthony v. Phila. & R. R. Co., et al.* 14 I. C. C. Rep. 581. (Nov. 10, 1908.)

Complaint of unreasonable rates on potatoes from Allentown to points in New York and New England, of discrimination in favor of agricultural interests by lower rates on cement, and petition for establishment of through routes and joint rates to New England points over the Poughkeepsie Bridge.

The only evidence relied on was a comparison with rates on cement. The value of cement was less, the risk and cost of handling less, and the volume of traffic greater. Complainant did not join the necessary

parties to the proposed through route nor did he show that potatoes did not enjoy a satisfactory through route between the points in question.

Held, (Harlan, C.), (a) that the circumstances surrounding the traffic in potatoes and cement were so different as to make the comparison of the rates of little value;

(b) that on the evidence and with only the parties now before it, the Commission would not order the through route prayed for.

Complaint dismissed.

723.—*Kehoe v. Illinois Central R. Co.* 14 I. C. C. Rep. 541. (Nov. 10, 1908.)

Claim for reparation on account of exaction of unreasonable reconsignment charge at Cairo, Ill.

The reconsignment charge was abrogated prior to the hearing and the claim was disallowed, but the Commission seemed to recognize the propriety of reconsignment charges in general.

723*.—*Kansas City Hay Dealers' Ass'n. v. Missouri P. R. Co., et al.* 14 I. C. C. Rep. 597. (Nov. 14, 1908.)

Complaint of unreasonable minimum carload regulation on cars for hay in and out of Kansas City, Mo.

The minimum regulations in force varied with the length of the car, but not with the breadth or height of cars of the same length. It appeared that, as a practical matter, this circumstance did not affect complainants very seriously. They relied on the ruling of the Commission in *Weimer v. Chicago & N. W. R. Co.*, 12 I. C. C. Rep. 462, (539), as laying down a rule binding on the Commission in this case.

Held, (Harlan, C.), (a) that while uniformity was desirable in regulations by carriers, yet the conclusions of the Commission in one case, being based mainly on questions of fact, could never be accepted as absolutely binding on it in the decision of a subsequent case between different parties;

(b) that the minimum carload rule, where of importance, should vary with the actual capacity of the car;

(c) that a brief of one of the defendants, filed after the time allowed, without any excuse for the delay, should be stricken from the files.

No order issued.

724.—*McCormick v. Chicago, B. & Q. R. Co.* 14 I. C. C. Rep. 611. (Dec. 7, 1908.)

Petition by shipper for switch connection.

From the testimony it did not satisfactorily appear that the proposed switch might be operated with safety, or that it would furnish sufficient business to justify its construction and maintenance.

Held, (Cockrell, C.), that the complaint must be dismissed.

725.—In Re Allowances for Transportation of Sugar. 14 I. C. C. Rep. 619. (Dec. 12, 1908.)

Investigation by Commission on its own motion.

It appeared that for at least 18 years prior to 1903 the carriers hauling sugar into New York had made an allowance to refineries of 2c. per 100 pounds for so-called "transfer" charges. These charges consisted of carrying the sugar from the railroad terminal to or from the refineries, but in about 30% of the traffic, there was no actual transfer necessary, the shipments being received by the carriers at the shipper's door. Certain of the defendants made the allowance only to refineries, while others allowed it to all shippers. After the passage of the Elkins Act, the transfer allowance was specified in the published schedules, but not in some cases in the same tariff where the rate was stated, making the actual net rate a subject of some confusion. The carriers contended that the Commission had no power to make an order in a case instituted on its own motion.

Held, (Cockrell, C.), (a) that in accordance with Section 13 of the Act, the Commission had the same powers where the inquiry was instituted on its own motion as it had when a complaint was made, and that it therefore could issue an order in the present case;

(b) that the nature of the payment was such that it was forbidden by the Act itself, and the Act was binding on the carriers even though the Commission issued no order;

(c) that allowances to shippers, in order to be justified, must be for transportation services which the carrier was under obligation to grant, and the present service not being such, the allowance amounted to a rebate and was illegal;

(d) that the form of the tariffs was confusing and for that reason also improper.

No order issued and case held open.

726.—Northern Pac. R. Co. v. Pacific Coast Lumber Mfgs'. Ass'n., et al. 165 Fed. 1. C. C. A. 9th Cir. (Oct. 5, 1908.)

Appeal from C. C. W. D. Wash., granting temporary injunction to restrain the putting into effect of advanced rates on lumber.

The advance in rates was announced to become effective on Nov. 1, 1907. The bill was filed on Oct. 1, 1907, and the temporary injunction granted on Oct. 31, 1907. The defendants were not inhabitants of the Western District of Washington, but were doing business there and were there served.

Held, (Gilbert, C. J.), (a) that the present being a suit under the Interstate Commerce Act, the Federal Courts had exclusive jurisdiction over it;

(b) that Section 1 of the judiciary acts of 1887 and 1888, providing that no suit should be brought except in the district of defendant's residence, did not apply to suits in which federal courts had exclusive jurisdiction, but that such might be maintained in any district in which the defendants could be found;

(c) that the federal court had jurisdiction to enjoin the putting into force of a proposed schedule of rates prior to the date when the same was to go into effect.

Order affirmed.

Union Pac. R. Co. v. Oregon & Washington Lumber Mfrs.' Ass'n., et al. 165 Fed. 13. Oct. 5, 1908, accord.

Ross, C. J., delivered an elaborate dissenting opinion in the latter case, holding that under Texas & Pac. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, (454). the court had no jurisdiction.

727.—**Kansas City Hay Co. v. St. Louis & S. F. R. Co.** 14 I. C. C. Rep. 631. (Nov. 14, 1908.)

Demand for reparation on account of alleged improper exaction of reconsignment charges on hay at Kansas City.

At the time the shipments in question were made, (September and October, 1907), defendant had on file a tariff providing for a reconsignment privilege on hay at Kansas City and fixing a charge of \$2 per car therefor, but the tariff naming the local rates into Kansas City did not specifically refer to this special reconsignment tariff. Later, after the issuance of Tar. Circ. 15-A, defendant amended its local tariff so as to refer specifically to the reconsignment tariff, in accordance with Rule 10 of the new circular. Complainant contended that as the reconsignment charge had not been referred to in the local tariff, it could not legally have been exacted and that the through rate only should have been charged, without the additional \$2.

Held, (Harlan, C.), (a) that unless this hay was properly hauled under the reconsignment rate, the sum of the local rates in and out of Kansas City should have been charged;

(b) distinguishing *Suffern & Co. v. Indiana, D. & W. R. Co.*, (232), that the charge in question was properly exacted.

Complaint dismissed.

APPENDIX C.

INTERSTATE COMMERCE ACTS AS ORIGINALLY ENACTED.

Chap. 104. An act to regulate commerce.

[Approved February 4, 1887, and in effect April 5, 1887, (24 Statutes at Large, 379; 1 Supp. to Rev. Stat. U. S., 529.)]

SEC. 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or prop-

erty, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing

the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such

published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in

the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

SEC. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who alone or with any other corporation, company, person, or party, shall willfully do or cause to

be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioner shall not engage in any other business, vocation or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy

or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

SEC. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and of any common carrier that may have been complained of.

SEC. 15. That if in any case in which an investigation shall be

made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complainant, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation

or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

SEC. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attor-

ney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

SEC. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the chairman of the Commission and the Secretary of the Interior.

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial opera--

tions of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

SEC. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

SEC. 22. That nothing in this act shall apply to the carriage, storage, or hauling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

SEC. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, Anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

SEC. 24. That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage.

AMENDMENT OF MARCH 2, 1889.

(25 Statutes at Large, 855; 1 Supp. to Rev. Stat. U. S., 684.)

Chap. 382. An act to amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

SEC. 1. That section six of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"SEC. 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

"Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous

public notice, to be given in the same manner that notice of an advance in rates must be given.

“And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

“Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carrier to publish, and the places in which they shall be published.

“No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

“It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named

thereon than is specified in the schedule filed with the Commission in force at the time.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of trans-shipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act."

SEC. 2. That section ten of said act is hereby amended so as to read as follows:

"SEC. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each

offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

“Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent

jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

SEC. 3. That section twelve of said act is hereby amended so as to read as follows:

"SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act, and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall

not be used against such person on the trial of any criminal proceeding."

SEC. 4. That section fourteen of said act is hereby amended so as to read as follows:

"SEC. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

SEC. 5. That section sixteen of said act is hereby amended so as to read as follows:

"SEC. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons

as it may appoint, all such inquiries as the court may think needful to enable it form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

“If the matters involved in any such order or requirement of

said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial (of) the findings of fact of said commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session."

SEC. 6. That section seventeen of said act is hereby amended so as to read as follows:

"SEC. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the

United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas."

SEC. 7. That section eighteen of said act is hereby amended so as to read as follows:

"SEC. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the City of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission."

SEC. 8. That section twenty-one of said act is hereby amended so as to read as follows:

"SEC. 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission."

SEC. 9. That section twenty-two of said act is hereby amended so as to read as follows:

"SEC. 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to

prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act."

SEC. 10. That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ; *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

AMENDMENT OF FEBRUARY 10, 1891.

(26 Statutes at Large, 734; 1 Supp. to Rev. Stat. U. S., 891.)

Chap. 128. An act to amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

SEC. 1. That section twelve of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony

shall not be used against such person on the trial of any criminal proceeding.

"The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

AMENDMENT OF FEBRUARY 8, 1895.

(28 Statutes at Large, 643; 2 Supp. to Rev. Stat. U. S., 369.)

Chap. 61. An Act To amend section twenty-two of an Act to regulate commerce, as amended March second, eighteen hundred and eighty-nine.

SEC. 1. That section twenty-two of an Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and as amended March second, eighteen hundred and eighty-nine, be, and is hereby, amended by adding thereto the following proviso:

“Provided further, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.”

AMENDMENT OF JUNE 29, 1906, HEPBURN ACT.

(34 Statutes at Large, 584.)

Chap. 3591. An Act To amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

SEC. 1. That section one of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

"Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States, to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

"The term 'common carrier' as used in this Act shall include express companies and sleeping car companies. The term 'railroad,' as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or im-

plied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act, shall, after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge and boards of managers of such homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars, nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

SEC. 2. That section six of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will

be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

"Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

"No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

"The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for

the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

"No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word 'carrier' occurs in this Act it shall be held to mean 'common carrier.'

"That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

That section one of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

"That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The wilful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation of-

fending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

“In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

“Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory,

or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall in addition to any penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be."

SEC. 3. That section fourteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of:

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

SEC. 4. That section fifteen of said Act be amended so as to read as follows:

"Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a com-

plaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions, under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality

so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act."

SEC. 5. That section sixteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in

favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

"The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by writ of injunction, or other proper process, mandatory or otherwise, to

restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

“From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

“The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of ‘An Act to expedite the hearing and determination of suits in equity, and so forth,’ approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days’ notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

“The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common

carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

SEC. 6. That a new section be added to said Act immediately after section sixteen, to be numbered as section sixteen a, as follows:

"Sec. 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

SEC. 7. That section twenty of said Act be amended so as to read as follows:

"Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers,

employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

"Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

"The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Com-

mission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

"In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense, and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

"Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

"Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

"That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

"And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading there-

for and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

SEC. 8. That a new section be added to said Act at the end thereof, to be numbered as section twenty-four, as follows:

"Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party."

SEC. 9. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

SEC. 10. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. 11. That this Act shall take effect and be in force from and after its passage.

By a joint resolution adopted after the passage of this Act it was provided that this Act should go into effect sixty days after June 29, 1906; see *supra*, Vol. I, p. 42 n. 53.

AMENDMENT, APRIL 13, 1908.

(35 Statutes at Large, 60.)

Chap. 143. An Act To amend an Act, entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory, thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six.

SEC.1. That paragraph four of section one of an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, be amended so that said paragraph as so amended will read as follows:

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge, and boards of managers of such Homes; to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of per-

sons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof."

ELKINS ACT, AS ORIGINALLY ENACTED.

[Approved February 19, 1903, (32 Statutes at Large, 847.)]

Chap. 708. An Act To further regulate commerce with foreign nations and among the States.

SEC. 1. That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The wilful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participate in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

SEC. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of

suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

SEC. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

SEC. 5. That this Act shall take effect from its passage.

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